

15 APRIL 1948

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Thursday, 15 April 1948

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INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Court House of the Tribunal
War Ministry Building
Tokyo, Japan

The Tribunal met, pursuant to adjournment,
at 0930.

Appearances:

For the Tribunal, all Members sitting, with
the exception of: HONORABLE JUSTICE LORD PATRICK,
Member from the United Kingdom of Great Britain and
HONORABLE JUSTICE HENRI BERNARD, Member from the
Republic of France, not sitting from 0930 to 1600.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

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(English to Japanese and Japanese
to English interpretation was made by the
Language Section, IMTFE.)

1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: All the accused are present
4 except UMEZU and SHIRATORI, who are represented by
5 counsel. The Sugamo Prison Surgeon certifies that
6 they are ill and unable to attend the trial today.
7 The certificates will be recorded and filed.

8 Major Blakeney.

9 MR. BLAKENEY: I am on page 297, Section 138.

10 138. That Mr. TOGO's falling out with the
11 TOJO Cabinet was not solely the result of jealousy
12 of the power of his office is revealed by a number
13 of other evidences. He has testified that the Greater
14 East Asia Ministry matter was only one of several
15 basic disagreements among them--only the final
16 crystallization of the basic differences which led
17 to the frontal clash. The tendency to neglect of
18 diplomacy and its function generally,⁷⁰⁷ and over-
19 optimism of the prospects of the war, which led to
20 the devoting of energy of the government to the
21 establishment of a domestic authoritarianism,⁷⁰⁸ as
22 well as fundamental disagreement over relations
23 between Japan and the Asiatic countries, are the

24 707. Tr. 35740.

25 708. Tr. 35740-41.

1 reasons which he specifically assigns. Mr. TOGO had
2 never been a crony of General TOJO or any of his
3 other Cabinet colleagues; and we have seen earlier
4 that from his entrance into the cabinet until the
5 commencement of the war their relations were hardly
6 untroubled. That the same condition continued
7 after the war had opened, until his resignation, is
8 not to be doubted. In this connection, there is a
9 most revealing sentence in the evidence of Admiral
10 SUZUKI Kantaro, in whose 1945 cabinet Mr. TOGO served
11 for the second time as Foreign Minister. Explaining
12 the appointment, Admiral SUZUKI said:

13 "For Foreign Minister, however, I made my
14 own choice of TOGO, for the reason that although I knew
15 him only slightly I had the feeling that he had
16 opposed the war from the beginning and had resigned
17 from the TOJO Cabinet as a measure of opposition to
18 TOJO's dictatorship and high-handed policies." 709

19 This is not idle gossip. Admiral SUZUKI
20 was for many years a member, and during Mr. TOGO's
21 foreign ministership in 1941-42 Vice-President of
22 the Privy Council, as such serving as chairman of
23 committees charged with investigation of important
24 problems which came before that body--as an instance
25 709. Tr. 35590.

1 appearing in our evidence, the investigation of the
2 Greater East Asia Ministry proposal itself, after
3 its adoption by the Cabinet.⁷¹⁰ In that position he
4 had ample opportunity to know and to form his judgment
5 of the attitude and activities of Foreign
6 Minister TOGO, who before as well as during the war
7 appeared before the Privy Council and its committees
8 to explain various matters pending there. His "I
9 knew him opposed to TOJO's high-handed policies" is
10 exact confirmation of Mr. TOGO's testimony. The
11 record of the committee meetings considering this
12 very Greater East Asia Ministry question shows, incidentally,
13 a complete sympathy of views between
14 Mr. TOGO--by that time of course a mere private
15 citizen--and a number of the committeemen, including
16 Admiral SUZUKI, who expressed exactly Mr. TOGO's
17 feeling: "this draft is not based upon the rules of
18 righteousness, but on the rules of might."⁷¹¹

19 In connection with the Greater East Asia
20 Ministry, the prosecution's position is that it
21 represents "aggressive war, conquest, domination."⁷¹²
22 That is why Mr. TOGO opposed it. That he was in
23 those days still in opposition to all such policies
24 generally is irrefutably proved by one fact: that
25

710. Ex. 687, Tr. 12071. 712. Tr. 12089.
711. Tr. 12093.

1 even before his resignation from the TOJO Cabinet,
2 he was a foreign minister in the most exceptional
3 position of being subject to the surveillance of the
4 secret police of the Army.⁷¹³

5 139. There is one remaining question,
6 relating to both of Mr. TOGO's terms of service as
7 Foreign Minister, which may as well be mentioned here.
8 The prosecution have devoted several pages of their
9 summation of the case against Mr. TOGO to discussion
10 of his alleged responsibility for the maltreatment
11 of prisoners of war.⁷¹⁴ It is not proposed here to
12 undertake any detailed answer to the argument
13 advanced, and for several reasons. In part, that
14 argument is one of law, raising questions which we
15 have already fully argued in another summation.⁷¹⁵

16 In part, that argument when made against a foreign
17 minister is one which we believe to represent a very
18 strained attempt where it has proved impossible to
19 take the victim by other means, to catch the defendant
20 with a dragnet of responsibility for these crimes so
21 repulsive as to arouse universal condemnation. And
22 in part, the subject has been ably and fully argued
23 by another defense counsel on behalf of another
24

25 713. Testimony of TANAKA (Tr. 35545).

714. Summation, WW-44 (Tr. 41947).

715. Summation for the Defense, Section "E", "On
Some Questions of International Law," Sections
33-37 (Tr. 42480-94).

1 foreign minister similarly situated and similarly
2 charged. That argument on behalf of the defendant
3 SHIGEMITSU Mamoru is therefore referred to,⁷¹⁶ and is
4 adopted so far as it is applicable to the case of
5 Mr. TOGO. I wish to emphasize a few of the points
6 therein contained, and to make one or two additional
7 ones peculiar to this defendant.

8 140. The prosecution have laid it down,
9 correctly it can hardly be doubted, as the law of
10 this case that "responsibility for an act follows the
11 power and duty to do the act."⁷¹⁷ Power to control
12 prisoners of war--to keep them in custody, to main-
13 tain and operate their places of detention, to treat
14 or mistreat them as it wished--was not in the Foreign
15 Ministry. That power was--as none denies--in the
16 War Ministry, exercised through the Prisoners of War
17 Control Bureau. The duty was that of the War Ministry.
18 Power to investigate the conditions of prisoners, to
19 deal with communications concerning them and their
20 condition and to report on those matters did not
21 reside in the Foreign Ministry; it resided in the
22 War Ministry, to be exercised through the Prisoners

23 716. SHIGEMITSU Summation, Sections 57-96
24 (Tr. 46353-98).

25 717. Summation, K-20 (Tr. 40565).

of War Information Bureau. The Prisoners of War Information Bureau was charged by both domestic and international law with the duty in those matters. By international law, in the form of Article 14 of the Regulations of Hague Convention IV: "An inquiry office for prisoners of war is instituted on the commencement of hostilities in each of the belligerent States * * * It is the function of this office to reply to all inquiries about the prisoners."⁷¹⁸

By domestic law, under the Imperial Ordinance of 29 December 1941, ordering the Bureau to have responsibility for investigation, communications, correspondence and information concerning the conditions of prisoners of war.⁷¹⁹

The duty of the Foreign Ministry, as a wealth of evidence, of prosecution and defense witnesses alike, has made indisputable, was that of receiving protests, transmitting them to the military authorities, receiving the answers of those authorities and conveying them to the representatives of neutral Powers who had lodged the protests. As the prosecution's witness General TANAKA put it, "the Foreign Office was merely a post office which handled

718. Ex. 15, p. 21 (Tr. 495, not read).

719. Ex. 1965-A, Tr. 14440-42.

the communications."⁷²⁰ No contention has been
advanced that the Foreign Ministry is guilty of
dereliction of this, its only duty in the matter.
The prosecution's contentions⁷²¹ are rather, first,
that Foreign Minister TOGO gave "evasive replies"
to protests; but the prosecution does not pretend to
believe that the Foreign Minister prepared the con-
tents of the replies out of his imagination--no
evidence contradicts the testimony of those who
were in charge of the matter that the answers were
always prepared on the basis of information furnished
by the Prisoners of War Information Bureau. The
prosecution contend that Foreign Minister TOGO "denied
the facts" brought to his attention by Allied pro-
tests; but they do not contend that he had any means
of knowing whether "the facts" were true, or that he
was in cases of "denial" doing other than forwarding
information received by him from the military author-
ities. The prosecution contend that Foreign Minister
TOGO "ignored" protests; but they do not venture to
explain how his "not replying at all" constitutes his
condonation of and assistance in "the commission of
the crimes now charged against him." The prosecution

720. Tr. 14365.

721. Summation, WW-43 (Tr. 41945).

1 attempt only to contend that, despite all the
 2 evidence in the case, "the responsibilities of the
 3 Foreign Ministry" were "to attend to the business
 4 regarding Japanese nationals in enemy countries and
 5 enemy nationals under the jurisdiction of Japan"⁷²²--
 6 which the prosecution seem to be suggesting with a
 7 straight face imposes upon the Foreign Ministry the
 8 full responsibility for all matters connected with
 9 prisoners of war! (It has incidentally been fully
 10 demonstrated that the duties set out in the document
 11 from which the prosecution profess to be quoting the
 12 words just above was but a draft plan, not stating
 13 correctly the duties of the Foreign Ministry's bureau
 14 in charge of the matter as it was finally constituted.⁷²³)

15 141. The question of the meaning and effect
 16 of Japan's undertaking to apply "mutatis mutandis"
 17 the provisions of the Geneva Convention governing
 18 the treatment of prisoners of war has been discussed
 19 a number of times before the Tribunal;⁷²⁴ here only its
 20 connection with the case of Mr. TOGO individually
 21 needs a few words. The prosecution have apparently
 22

23 722. Summation, WW-43 (Tr. 41946).

24 723. Ex. 3896, Tr. 35784; Ex. 3897, Tr. 35785.

25 724. Summation for the Defense, Section "E",
 "Some Questions of International Law,"
 Section 36 (Tr. 42490-95);
 SHIGEMITSU Summation, Sections 78-85
 (Tr. 46376-81).

abandoned the claim, made in the Indictment, that
1 this commitment was equivalent to Japanese adherence
2 to the convention; now, however, they assert that the
3 responsibility of Mr. TOGO for such violations of the
4 assurance as may have occurred "is doubly heavy
5 because it was he who had given for Japan the solemn
6 assurances which were never kept or intended to be
7 kept." ⁷²⁵ What evidence there may be that it was
8 never intended that the assurances should be observed
9 we need not inquire here; there is at all events no
10 trace of proof that Mr. TOGO, in forwarding to the
11 American and British Governments the assurance of the
12 Ministry of War, knew that the intention was not to
13 abide by it. His responsibility, if any, is sub-
14 mitted to be exactly the same as that of any other
15 foreign minister who did not "give for Japan"--act as
16 channel in conveying from the War Ministry--the
17 assurances. Mr. TOGO has testified to his under-
18 standing of the meaning of this phrase, as used by
19 the military authorities--that he supposed it "to
20 imply" that in the absence of serious hindrances the
21 Convention would be applied * * *; I assumed also * * *
22 that where the requirements of the Convention came
23 into conflict with the provisions of domestic law
24
25 725. Summation, WW-45 (Tr. 41947).

726

1 the former would prevail." The matter is mentioned
2 only because these words of his have been rather
3 extensively discussed in the various summations;
4 legally, it must be immaterial what he supposed to be
5 the intent of the commitment which he did not origin-
6 ate nor create, but merely forwarded from the War
7 Ministry. At any rate, all the evidence is in agree-
8 ment that the test intended by use of this language
9 was "the absence of serious hindrances." Japan was
10 bound to whatever she was bound to entirely without
11 regard to the supposition of the Foreign Minister
12 forwarding the "assurances" of the meaning of the
13 words; and his supposition can, it is submitted, have
14 no bearing on the extent whether of the commitment or
15 of any liability which he may incur as a result of
16 having given the assurance.

17 142. The remainder of the prosecution's
18 case against this defendant in regard to prisoner of
19 war questions rests wholly on surmise. "He must have
20 known what was being done"; "He was well informed
21 through Allied broadcasts"; knowing what the policy
22 of the Japanese Government was, he "took an important
23 part in its execution, thereby condoning and approving
24

25 726. Tr. 35770.

it."⁷²⁷ Of all this there is no evidence. As has
 1 been shown in the full summation on this subject to
 2 which I have already referred, not even the military
 3 officers charged with direct responsibility over
 4 prisoners of war knew, in many instances, what was
 5 being done; it is incredible that a civilian minister
 6 should have known. Had he known, he could have done
 7 nothing to change conditions, except to protest to
 8 those in charge, which the evidence shows that he
 9 often did -- by repeatedly returning to the War
 10 Ministry for fuller information replies which he
 11 regarded as inadequate by requesting it to expedite
 12 its replies,⁷²⁸ and in at least two cases of protests
 13 which he recognized as important if true, by taking up
 14 the matter directly with War Ministers, Generals TOJO
 15 and ANAMI,⁷²⁹ who were possessors of the ultimate re-
 16 sponsibility in the matter.⁷³⁰ But, I repeat, there
 17 is no evidence that he knew.

18 "The accused himself does not deny," the
 19 prosecution say, "that when he resumed office in
 20 April 1945 the protests had grown enormously in
 21 number and remained for a great part unanswered."⁷³¹

22 727. Summation, WW-44 (Tr. 41950).

23 728. Testimony of SUZUKI, Tadakatsu (Tr. 15528-29).

24 729. Id., (Tr. 36796) and testimony of TOGO (Tr. 36773-74).

25 730. Testimony of TOGO (Tr. 35771-72).

731. Summation, WW-44 (Tr. 41948).

1 Not only does he not deny it, he explains it, as do
2 witnesses on his behalf.⁷³² He explains the situation
3 of breakdown of communications which had made almost
4 impossible communication with the military forces at
5 the fronts, the difficulties of communicating even
6 with the neutral representatives in Japan itself;
7 the Foreign Ministry, he says, did not fail in the
8 responsibility which was its, of forwarding protests
9 or inquiries and the answers thereto.⁷³³

10 143. We shall give the prosecution the
11 last word on the responsibility of a foreign
12 minister for maltreatment of prisoners of war. They
13 originally formulated this unexceptionable statement of
14 the test of such liability.

15 "The general proposition may, therefore, be
16 stated that all persons who have the power to control
17 the acts of others who commit breaches of the laws
18 of war and who, knowing that such breaches have been
19 committed, take no steps to prevent their repetition;
20 or who, having reason to anticipate violation of the
21 laws of war by persons under their control, fail to
22 take proper measures to prevent their occurrence; or
23 who, having a duty to ensure that their colleagues
24

25 732. Testimony of SUZUKI (Tr. 38786.)

733. Tr. 35772-74.

1 conform to the laws of war, neglect to perform that
2 duty, are themselves guilty of offenses against the
3 laws of war.

4 "In fixing the responsibility for violations
5 of the laws of war upon persons who, by reason of
6 their official position, have power to control the
7 acts of subordinates, and who may be remote from
8 the places where the atrocities are actually committed
9 by the forces under their control, it may be contended
10 that it is necessary that such persons should have
11 knowledge that atrocities are likely to be committed
12 or have been committed before any responsibility
13 for their failure to prevent the commission or the
14 repetition thereof can be imposed upon them. Once it
15 is shown that a person has the knowledge or ought to
16 have the knowledge that atrocities are likely to be
17 committed or have been committed by others under
18 his control, it is submitted that a duty immediately
19 arises to exercise the power of control so as to
20 prevent the commission or repetition of such offenses.^{733a}"

21 Application of this test to the case of the
22 defendant TOGO is suggested.
23

24 733a. Tr. 16787-89.
25

THE SUZUKI CABINET

AND THE ENDING OF THE WAR

1
2
3 144. Mr. TOGO's activities in the SUZUKI
4 Cabinet, which he entered as Foreign Minister on 9
5 April 1945, after having been a private citizen for
6 two and a half years, arouse no enthusiasm in the
7 prosecution. It being at that time a question
8 whether Japan should attempt to make peace or fight
9 to the bitter end, they say, "the defense asserts
10 that when the accused joined the cabinet he had
11 chosen the first course and agreed to enter the
12 cabinet on the understanding that this would be
13 done. Even if this were so it would prove nothing
14 in his favor, but it is not correct." ⁷³⁴ This raises
15 two questions: Is it in Mr. TOGO's favor? Is it
16 true? I shall postpone the first question to the
17 second.

18 145. And I must first retrace my steps for
19 a moment. It will be remembered that Mr. TOGO had
20 stayed on in the TOJO Cabinet, even when it led
21 Japan into war, with the thought that he would be
22 able to work for ending the war. He had lost no
23 time in planning for that. Immediately after the
24 beginning of the war -- on New Year's Day of 1942,
25 734. Summation, SWW-41 (Tr. 41,942-43)

with Japanese arms triumphant throughout the Pacific
 1 and the nation in the first flush of incredible vic-
 2 tory -- so early as that New Year's Day Foreign
 3 Minister TOGO took advantage of the occasion to ad-
 4 dress to the staff of the Foreign Ministry an in-
 5 struction that it was even then time to be studying
 6 and making preparations to end the war, lest the
 7 opportunity when it came be lost. ⁷³⁵ On the same day
 8 he had a talk with General MUTO, who had called to
 9 pay his respects, and they had conversation on the
 10 desirability of early termination of the war, the
 11 Foreign Minister stating that he would do all in
 12 his power toward that end. ⁷³⁶

14 In 1942 Mr. TOGO had attempted to set into
 15 motion a mediation for Soviet-German peace, which he
 16 thought offered the best chance for restoration of
 17 general peace. In January or February, when Ambassa-
 18 dor Smetanin was leaving for home, Mr. TOGO asked
 19 him to tell Commissar Molotov from him that he was
 20 ready at any time that the USSR might desire it to
 21 render good offices for mediation, and added that
 22 Japanese-Soviet relations were then "like a shaft
 23 of sunlight in the midst of a shower, and that it

25 735. Testimony of TOGO (Tr. 35,777)

736. Testimony of MUTO (Tr. 33,177-79)

1 was his desire and intention to extend this light
 2 to the whole world." ⁷³⁷ Again in July Mr. TOGO in-
 3 structed his Ambassador in the Soviet Union, Mr.
 4 SATO, to attempt to pave the way for Japan's rendi-
 5 tion of good offices between Germany and the USSR,
 6 "with the final aim of bringing about the earliest
 7 possible restoration of general peace." ⁷³⁸ Leaving
 8 office soon afterward, Mr. TOGO had no further
 9 opportunities for official action, but he did talk
 10 with various persons about his feeling that the war
 11 had to be ended as soon as possible. ⁷³⁹

12 146. This was the background with which
 13 Mr. TOGO entered the SUZUKI Cabinet, with the inten-
 14 tion which he has testified to having then had of
 15 working for the war's end. The prosecution's posi-
 16 tion toward this testimony of his has been set out
 17 above; characteristically of them, they have and
 18 have cited no evidence to prove the alleged falsity
 19 of his statement that he did enter that cabinet on
 20 the understanding that he would be given scope to
 21 work for peace. The "argument" which they offer
 22 to sustain their blunt allegation of the falsity of
 23

- 24 737. Testimony of NOGUCHI (Tr. 35,383-4) and TOGO
 (Tr. 35,777-8)
 25 738. Testimony of SATO Naotake (Tr. 35,553-4) and
 TOGO (Tr. 35,778)
 739. Testimony of TOGO (Tr. 35,778)

1 his testimony and that of two other highly respect-
2 able witnesses, neither of them, of course, cross-
3 examined by the prosecution, is that no efforts for
4 peace were made until the end of June. "Even if
5 this were so" it would not support the prosecution's
6 contention, "but it is not correct."

7 Mr. TOGO has testified that when offered
8 the foreign portfolio by Admiral SUZUKI, on 8 April,
9 he had at first refused it. He was willing to enter
10 a cabinet only if it was intended to bring about
11 peace promptly, and to that end it was necessary
12 that the premier in whose cabinet he was to serve
13 should share fully not only his desires for peace,
14 but his estimate of the war situation which would
15 give conviction of the necessity for action. 740

16 Admiral SUZUKI evidently shared Mr. TOGO's view of
17 the desirability of bringing about an end of the
18 war, for he has testified that he had made his
19 choice of Mr. TOGO for the Foreign Ministership for
20 the reason that he

21 "had the feeling that he had opposed the
22 war from the beginning and had resigned from the
23 TOJO Cabinet as a measure of opposition to TOJO's
24 dictatorship and high-handed policies. I had
25 740. Tr. 35,779

believed from the beginning that war against America
 1 and Britain could not succeed and when selected as
 2 Premier I understood that it was to be my duty to
 3 attempt to bring about the ending of the war; there-
 4 fore, I wished to select as Foreign Minister a man
 5 who was known to have opposed war."⁷⁴¹

6 Mr. TOGO did not accept the offer of the portfolio
 7 at the first meeting; seemingly he was not quite
 8 satisfied that the Premier and he did see eye to
 9 eye.⁷⁴²

10 It was, as Admiral SUZUKI says, difficult
 11 for the Premier to speak openly of the matter in
 12 war-time Japan;⁷⁴³ but at a second meeting Mr. TOGO

13 reiterated his views, and the Premier expressed
 14 agreement, whereupon Mr. TOGO accepted the office
 15 on the condition that the cabinet would support him
 16 in working to end the war, and on 9 April became

17 Foreign Minister.⁷⁴⁴ It has been mentioned that

18 cross-examination of these witnesses was waived; in
 19 the cross-examination of Mr. TOGO himself no question
 20 indicating doubt of these facts was asked,⁷⁴⁵ and no
 21 evidence was introduced by the prosecution in

22 741. Tr. 35,590-1

23 742. Testimony of TOGO (Tr. 35,779), MATSUDAIRA
 (Tr. 35,596) and SAKOMIZU (Tr. 35,604-5)

24 743. Tr. 35,591; testimony of SAKOMIZU (Tr. 35,605).

25 744. Testimony of TOGO (Tr. 35,779-80), SUZUKI
 (Tr. 35,591), SAKOMIZU (Tr. 35,605) and OKADA
 (Tr. 37,167)

1 rebuttal to contradict any of this testimony. The
2 prosecution in asserting that Mr. TOGO's testimony
3 that he joined the SUZUKI Cabinet on the understand-
4 ing that Japan should try to make peace is "incor-
5 rect" are offering us another example of the familiar
6 irresponsibility.

7 147. To disprove the intent with which Mr.
8 TOGO entered the SUZUKI Cabinet the prosecution
9 allege that the evidence shows no attempts for
10 peace to have been made until the beginning of July.
11 "Even if this were so," it would not disprove the
12 intent of Mr. TOGO to work for peace -- much less
13 the intent with which he entered the Cabinet -- for
14 it must be obvious to all that ending a war is a
15 delicate matter, especially in a country where the
16 war-party is still firmly entrenched, and that a
17 lapse of two months or so before open, concrete
18 efforts could be made would not be occasion for
19 wonder. "Even if this were so," it would not dis-
20 prove Mr. TOGO's intent; "but it is not correct."
21 The prosecution position, in their own words to
22 prevent any possible misunderstanding: "The evidence
23 in this case does not show that the Japanese Govern-
24 ment made any attempt for peace until the beginning
25

of July 1945." ⁷⁴⁶ The evidence: Firstly, two days after becoming Foreign Minister Mr. TOGO was called upon by SAKAYA Tadashi, Japanese Minister to Finland then in Tokyo, who told him that there was an attempt under way to secure action of the Swedish Government to ascertain the American peace terms. Minister SAKAYA asking his opinion of the move, Mr. TOGO said that he was eager for an early peace and much appreciated the offer by the Government of Sweden and its Minister in Tokyo, Mr. Bagge, to undertake such service, and instructed Minister SAKAYA to convey to Minister Bagge his desire that he and his Government work on the plan. ⁷⁴⁷ One "attempt for peace" before July. Secondly, in the latter half of May Foreign Minister TOGO requested former Premier HIROTA to initiate talks with the Soviet Ambassador to feel out the reaction of the USSR to a suggestion that she mediate in the Pacific War, and Mr. HIROTA had several meetings with Ambassador Malik in June to discuss the subject. ⁷⁴⁸ Two "attempts for peace" before July. Thirdly, and vastly the most important, was Mr. TOGO's efforts in the Supreme Council for the Direction of War.

746. Summation, SWW-41 (Tr. 41,943)

747. Test. of TOGO (Tr. 35,780), SAKAYA (Tr. 35,455-7) and Bagge (Tr. 34,559)

748. Test. of TOGO (Tr. 35,783) and NOGUCHI (35,384-5)

1 This organization, as the Tribunal is aware, was
 2 the successor of the Liaison Conference, with approx-
 3 imately the same composition and powers. The matter
 4 of terminating the war could hardly be discussed
 5 there, however, because the meetings were rather
 6 formal and tended to adopt a strong stand, and be-
 7 cause of danger of leakage into the military camp
 8 of the discussion through the presence there of
 9 the secretaries. Mr. TOGO therefore took the
 10 initiative in suggesting to the Premier (soon after
 11 having advised the Emperor that the war should be
 12 promptly ended) the convening of meetings composed
 13 of only the principal members of the Supreme Council,
 14 without the presence of secretaries. The advice
 15 was accepted by the Premier; the Chief of the Army
 16 General Staff, General UMEZU, supported; and the
 17 meetings began to be held in mid-May. ⁷⁴⁹ These meet-
 18 ings debated the policy to be adopted -- peace or
 19 war -- and at the meeting of the 14th, "after much
 20 discussion it was agreed that in view of the war
 21 situation and events abroad, Japan should realize a
 22 speedy termination of the war." ⁷⁵⁰ This is "attempt
 23 for peace" the third, and altogether epochal. For
 24

25 749. Testimony of TOGO (Tr. 35,781-2)

750. Testimony of TOGO (Tr. 35,782), SUZUKI
 (Tr. 35,592) and SAKOMIZU (Tr. 35,605-06)

1 the first time since the commencement of the war,
2 there had been discussion, not to say decision, of
3 the possibility of ending the war, in official
4 quarters. It is surely unnecessary to labor the
5 point that the suggestion of ending a war in circum-
6 stances which mean recognition of defeat is likely
7 to be unpopular, in any country; and in a country
8 dominated by militarists, as the Japan of 1945 was
9 still, is sure to be labelled treasonable. Here was,
10 of course, the reason that those advising Premier
11 SUZUKI on the selection of his cabinet had said
12 that "the war could not be terminated in the domestic
13 circumstances then prevailing without a Foreign
14 minister who had unusual sincerity and the determin-
15 ation even to risk his life," which had pointed to
16 Mr. TOGO as the only possible candidate. ⁷⁵¹ That ter-
17 mination of the war had been first brought up for
18 official consideration through the efforts of Mr.
19 TOGO, as part of the specific mission which he had
20 assigned himself in entering office again, against
21 militarist opposition as he had always throughout
22 his life been met with such opposition, is submitted
23 to be the conclusive answer to any possible doubt
24 whether his intention to end the war was a sincere one.
25 751. Testimony of MATSUDAIRA (Tr. 35,597)

148. The prosecution place great stress on
 1 the fact that an Imperial Conference of 8 June de-
 2 cided that the war would go on; this, in a prose-
 3 cution viewpoint, is indicative that there was no
 4 real intention to work for peace. ⁷⁵² It is obviously
 5 proof of nothing of the sort. The Imperial Confer-
 6 ence had become the sort of meeting which would be
 7 "formal" and would tend to "adopt a strong stand,"
 8 and hardly the place that we should expect to find
 9 openly discussed the necessity of acceptance of the
 10 disgrace of the Empire -- the 9 June 1945 meeting,
 11 being made on the eve of the opening of the Diet
 12 session, ⁷⁵³ has all the earmarks of an attempt to
 13 bolster up failing morale. In any event, as Mr.
 14 TOGO explained in cross-examination on the subject,
 15 the decision was one adopted after much debate
 16 whether the war could and should be continued, and
 17 was a conditional decision to continue if certain
 18 conditions could be met. He and some others were
 19 of opinion that the conditions could not be met. ⁷⁵⁴
 20 The decision did not affect Mr. TOGO's course, for he
 21 continued with the efforts toward ending the war which
 22 we have already seen; he told Marquis KIDO soon after-

753. Tr. 31,146

754. Tr. 36,110-11

752. Summation, SWW-42
(Tr. 41,943)

ward, according to the Marquis, that the "vigorous
 1 decision" had put the Foreign Ministry in a diffi-
 2 cult position in its endeavors for peace. Nine days
 3 after the Imperial Conference the principal members
 4 of the Supreme Council were again agreeing that the
 5 war must end;⁷⁵⁵ and within the fortnight after the
 6 decision it was in effect canceled by the Emperor's
 7 calling in the principal members of the Supreme
 8 Council and conveying to them his desire for termin-
 9 ation of the war.⁷⁵⁶ Marquis KIDO takes credit for
 10 bringing this about, while admitting that it was
 11 Foreign Minister TOGO who repeatedly expressed his
 12 anxiety over and disapproval of the Imperial Confer-
 13 ence decision.⁷⁵⁷ At any rate, Marquis KIDO had not
 14 brought about any such result until after the appear-
 15 ance in the Government of a Foreign Minister who
 16 vigorously championed and labored for the cause and
 17 who had frequently since April explained to the
 18 Marquis the necessity of ending the war quickly.⁷⁵⁸

20 The proposal for sending Prince KONOYE as a
 21 special envoy to Moscow to work for Soviet media-
 22 tion to end the war is another to which Mr. TOGO
 23 devoted considerable effort. The correspondence

- 24 755. Testimony of TOGO. (Tr. 35,783-4)
 25 756. Testimony of KIDO (Tr. 31,155-62)
 757. Id., (Tr. 31,155-60)
 758. Testimony of TOGO (Tr. 35,783)

1 between him and Ambassador SATO in Moscow, giving
 2 the entire history of the effort to put the plan
 3 into effect and its final failure, is in evidence,
 4 but it need not be detailed here. ⁷⁵⁹ The prosecu-
 5 tion note the fact that "the peace which Japan was
 6 seeking was, of course, a peace on terms. The ac-
 7 cused made it very clear that Japan would rather
 8 fight to the bitter end than surrender uncondi-
 9 tionally." ⁷⁶⁰ It is scarcely to be regarded as
 10 criminal to attempt to secure favorable terms upon
 11 which to surrender; as for fighting to the end,
 12 Foreign Minister TOGO very shortly afterward led
 13 the fight for acceptance of surrender.

14 149. The Potsdam Declaration supervened.
 15 Much controversy, the details of which are of no
 16 present interest, was occasioned by it. For now
 17 it will be of interest to note that it was the
 18 strong efforts of Foreign Minister TOGO alone
 19 which resulted in its acceptance. Twice the Su-
 20 preme Council for the Direction of War was evenly
 21 divided on the action to take; each time it was
 22 the decision of the Emperor, "We approve the opin-
 23 ion of the Foreign Minister," resulting from the
 24

25 759. Exhibits 2695-2705 (Tr. 23,575-90)

760. Summation, SW-42 (Tr. 41,943)

strong and earnest insistence of Mr. TOGO, which broke the deadlock. First his argument prevailed that Japan should not attempt the attaching of conditions to acceptance; then his view that the American reply to the Japanese inquiry should be accepted without the making of further efforts at securing interpretation.⁷⁶¹

In connection with the Potsdam Declaration the prosecution have spoken of Foreign Minister TOGO as "the responsible minister."⁷⁶² The Tribunal is aware of the fact of collective responsibility of cabinet ministers; but this reminds me to mention that the Foreign Minister was in fact more nearly responsible in his sphere in the time of the SUZUKI Cabinet. Obviously, in Admiral SUZUKI's time the Foreign Minister was left more to management of foreign affairs: the testimony shows more frequent reports to the Throne by him than during his service in the TOJO Cabinet (when, it will be remembered, reports even on foreign affairs had been made by the Premier), as well as other instances.⁷⁶³ His success in urging his war-
ing policy, from April to August, shows how

- 761. Testimony of SAKOMIZU (Tr. 35,607-10), SUZUKI (Tr. 35,593-4) and TOGO (Tr. 35,785-90).
- 762. Summation, SEE-136 (Tr. 40,843).
- 763. Testimony of TOGO (Tr. 35,781-2, 35,784)

1 such larger responsibility the foreign minister
2 had for acts of state of the later period than of
3 the earlier.

4 150. The acceptance of the credit for
5 bringing about the end of the war has become fashion-
6 able; nowadays everyone ended it. Marquis KIDO,
7 for example, seems to consider that he has earned
8 a considerable merit by his ending of the war. This
9 is confusing; can this be the same Marquis KIDO who
10 had never interfered in politics or affairs of state
11 nor had any power to do so? Is it the same man who
12 did nothing to prevent the war of 1941 that in
13 1945 finds it necessary continually to stimulate
14 to work for peace Foreign Minister TOGO, for years
15 the one outstanding opponent of war in Japan? Can
16 this be the Marquis KIDO who in December 1941
17 hadn't enough interest in averting war to ask the
18 Foreign Minister what it was that the President of
19 the United States was saying to the Emperor? How-
20 ever that may be, while various and sundry other
21 Japanese kept their high peaceful emotions locked
22 within their breasts, Mr. TOGO acted -- he ended
23 the war.
24

25 This brings us back to the second branch
of the prosecution's position, which requires

1 little comment after all. Mr. TOGO's entering into
2 the government with the intention of ending the war,
3 they say -- and his ending it, they imply -- "proves
4 nothing in his favor." We can express only wonder-
5 ment at the prosecution's callous brushing aside of
6 the fact that the ending of the war before the main-
7 land of Japan had been invaded saved the Allied
8 forces casualties which it had been estimated would
9 reach a million, not to speak of the far greater
10 losses which Japan would incur -- but that is not
11 the question here. The question here is: Whether
12 Mr. TOGO's opposition to the war in 1945, taken
13 with his opposition to it in 1941, his opposition
14 to it in the intervening years, his opposition to
15 war and a policy of war at any and every time pre-
16 ceding 1941 to which the evidence contains refer-
17 ence, is not probative of his intent to commit
18 aggression or not? What stronger proof can one ask?
19 The courage which it required of a statesman to fight
20 for peace in the Japan of war-time still imbued with
21 the militarist rulers' conception of surrender as
22 the ultimate depth of degradation, to which death
23 was infinitely to be preferred, will be readily
24 conceived. There will perhaps be no disposition
25 to question Mr. TOGO's statement that his endeavors

1 as Foreign Minister of the SUZUKI Cabinet to bring
2 the war to an end were at the risk of his life,⁷⁶⁴
3 just as in autumn 1941 his struggle to avert war
4 had put him in peril of his life from the militar-
5 ists.⁷⁶⁵ That peace meant enough to him to fight
6 for when it demanded such courage is submitted to
7 "prove something in his favor," something of
8 whether the intention of waging war of aggression
9 was his.
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764. Tr. 35791.

765. Testimony of TANAKA (Tr. 35543).

CONCLUSIONS

151. Your Honors, I have been long, yet have neglected much. I am exceedingly reluctant to submit the case of Mr. TOGO with any of the relevant evidence left undiscussed, any argument against him unanswered; yet there are limits to time and strength. It is my fear that, in submitting my case to a bench of jurists gathered from the four corners of the earth, representing diverse legal systems -- of many of which I know nothing -- I may err if I assume that that which to me seems immaterial or unimportant must be similarly regarded by all Members of the Tribunal. It must, however, be impossible to go astray if one carries the big issues, and to doing this I have tried mainly to confine myself, with occasional necessary exploration of minor points or collateral matters.

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In my introduction I stated my purpose in this argument to be three, which I thought if accomplished would compel the acquittal of the defendant TOGO. The first, to eliminate from the case the factitious issues, to expose and destroy that large part of the prosecution's case against this defendant which was built upon a basis of surmise and speculation rather than the evidence in the case with the reasonable inferences to be drawn from it. If my demonstration of the extent to which the structure of the prosecution's case is a sham and a fraud has been unsuccessful, the Tribunal will know indignation over the cavalier manner in which it is proposed the disposition of men's lives and liberties should be made here. My second purpose was to have been the making clear of the real issues, the demonstration of what the actual evidence discloses concerning the defendant whom I represent. Thirdly, I undertook to argue that upon even the prosecution's own proposed principles of liability the defendant TOGO had been proved guilty of nothing. My effort in these directions I shall now review briefly.

152. The facts in the case of the defendant TOGO, as disclosed by the evidence, are submitted to as follows. There is no evidence of his having

participated in any conspiracy prior to October

1 1941, when he joined the TOJO Cabinet as Foreign
 2 Minister. The prosecution's offer to abandon the
 3 charges of offenses prior to that date was met with
 4 an expression of doubt from the bench whether they
 5 had the power to do so ⁷⁶⁶; the answer is of no
 6 concern, however, for evidence which the prosecution
 7 believe insufficient to make a prima facie case
 8 will not sustain a finding by the Tribunal of guilt
 9 beyond a reasonable doubt. The evidence fails to
 10 show any act of the defendant's from 1928 to 1941
 11 constituting a crime under the Charter or demon-
 12 strating aggressive or criminal intent.

13 In 1928 the defendant was secretary of the
 14 Japanese Embassy in Washington, and from 1929 to
 15 1932 he was councillor of the Embassy in Berlin. In
 16 1932 he served concurrently as Secretary-General of
 17 the Japanese delegation to the Geneva Disarmament
 18 Conference, where he worked for disarmament ⁷⁶⁷.

19 In March 1933 the defendant became Director
 20 of the European-American Bureau of the Foreign Ministry,
 21 in which position he remained until October 1937.
 22 The Japanese withdrawal from the League of Nations

23 (766. Tr. 35,357

24 767. Testimony of TOGO, Tr. 35,621-22, 35,737,
 25 and SATO, Tr. 35,548-50)

had just then become decided policy; the defendant
1 had had nothing to do with adoption of that policy,
2 but had expressed himself in his private capacity
3 as opposed to it ⁷⁶⁸. Upon his appointment as bureau
4 director he was ordered to prepare a proposed foreign
5 policy for Japan in the light of the withdrawal from
6 the League, and the document submitted in obedience
7 to this instruction is clear evidence of the defend-
8 ant's advocacy of a policy of peace and honesty in
9 international relations. The sale of the Chinese
10 Eastern Railway by the U.S.S.R. to Manchukuo was
11 managed in 1933-35 to a large extent by the defend-
12 ant; in the course of the negotiations he made
13 considerable efforts to bring about adoption by the
14 Japanese Army of a fair and reasonable attitude, and
15 was responsible in large measure for the success of
16 the transaction. The defendant also attempted to
17 conclude agreements with the U.S.S.R. for demarkation
18 of Soviet boundaries with Manchukuo and settlement
19 of border incidents occurring there, but the negoti-
20 ations failed. While bureau director he was also
21 charged with management of the Foreign Ministry's
22 part in conclusion of the Anti-Comintern Pact; the
23 defendant did not establish the policy of entering
24
25 (768. Testimony of SATO, Tr. 35,548-50)

into such a pact, but opposed the policy and worked
1 within the limitations of his office to moderate it
2 and to weaken the pact, succeeding in some particu-
3 lars. He is not shown to have supposed the Pact
4 to be other than it appears on its face to be, an
5 agreement for action against the Comintern, and the
6 secret agreement a vague undertaking for consulta-
7 tion over joint measures which it might be thought
8 desirable to take in the event of unprovoked attack
9 upon either signatory by the U.S.S.R. The word
10 "unprovoked" was inserted in the secret agreement
11 at the defendant's instance, to avoid any suggestion
12 that the agreement was more than a defensive alliance.
13 The defendant secured adoption of his proposal
14 that negotiations for Anglo-Japanese understanding
15 should be undertaken concurrently with those for
16 the Anti-Comintern Pact, his intention being thereby
17 to weaken the effect of the Anti-Comintern Pact and
18 to promote friendly relations with the democratic
19 nations; this undertaking came to nothing owing
20 to the outbreak of the China Incident.
21

22 153. From December 1937 to October 1938 the
23 defendant was Ambassador to Germany. He was unco-
24 operative with the German Government's efforts to
25 obtain special rights in China, was openly anti-

1 Nazi in sentiment, and was strongly opposed to the
2 proposal for a three-power alliance of Germany,
3 Japan and Italy concerning which negotiations were
4 then under way. Although the negotiations were not
5 being conducted by him, he expressed his opposition
6 to the proposed alliance, and when matters reached
7 the stage where he was to be charged with carrying
8 on the negotiations he was so obstinate in objecting
9 that he was removed from his post and transferred to
10 Moscow.

11 From October 1938 to October 1940 the defend-
12 ant was Ambassador to the U.S.S.R. While there he
13 effected settlement of the fisheries question which
14 from before his arrival in Moscow until well into
15 1939 seriously threatened rupture of relations. The
16 Nomonhan Incident of 1939 was settled through diplo-
17 matic negotiations between the defendant and Foreign
18 Commissar Molotov, the defendant having taken the
19 initiative both with his own government and with the
20 Soviet government for commencing negotiations. There-
21 after the defendant secured authorization from his
22 government to negotiate for a non-aggression pact
23 with the U.S.S.R. Although no pact was concluded
24 during his tenure in Moscow, the draft agreement
25 reached between the defendant and Commissar Molotov

in 1940 was substantially identical with the Neu-
trality Pact concluded in the spring of 1941.

There has been shown nothing in the conduct of the defendant in his two positions as ambassador which constitutes a crime cognizable under the Charter. So far as appears he was on the contrary at all times working against plans of aggression; his service in Moscow is noteworthy for his sustained effort for the improvement of Soviet-Japanese relations.

154. The defendant was recalled from Moscow in October 1940, and occupied no office until he became Foreign Minister of the TOJO Cabinet on 18 October 1941. There is no evidence that he undertook this post with intention to commit aggression, or that he joined a conspiracy, if one existed, at that time. He accepted the portfolio of foreign affairs upon the express understanding that the new cabinet would reexamine the national policy completely with a view to successfully concluding the Japanese-American negotiations then in progress. Throughout October he waged a single-handed fight against the militarists in the Liaison Conference to obtain consent that the negotiations be continued, and especially to win agreement to the relaxation

1 of the Japanese terms in the negotiations. There is
2 no evidence that anyone supported him in this strug-
3 gle; as the price of gaining his point, the defend-
4 ant had to agree to the Liaison Conference decision
5 that if negotiations failed a decision for war would
6 be made. The new proposals were presented to the
7 United States, who however regarded them as value-
8 less, and the negotiations failed with the presenta-
9 tion on 26 November of the Hull Note. The defendant
10 honestly and reasonably believed that the Hull Note
11 forced upon Japan a war in self-defense, which he
12 therefore agreed to on 1 December.

13 After the decision for war the defendant had
14 to fight again, single-handed, against the demand of
15 the Navy that the negotiations be left unterminated
16 in order that the war might commence with an effective
17 surprise attack; he succeeded in securing consent
18 to the giving of notice to the United States break-
19 ing off the negotiations. The time for delivery of
20 the notice was set by the Navy High Command, and ap-
21 proved by the defendant upon the assurance that it
22 would leave a sufficient time before commencement of
23 hostilities. The notice was drafted by Foreign,
24 War and Navy Ministry officials jointly, the con-
25 tents being those dictated by the Liaison Conference

1 discussions and decisions. The notice was distributed
2 at the Liaison Conference and was unanimously approved,
3 as it was upon being reported to the Cabinet. It
4 was delivered to the United States Government later
5 than the time arranged, the fault for the delay being
6 in the Embassy in Washington. There is no evidence
7 of malice or negligence of the defendant in connec-
8 tion with the delay. Hostilities commenced earlier
9 than the hour at which delivery of the notice was
10 scheduled, but the defendant was unable to obtain
11 knowledge of the time set for hostilities, which
12 was an operational secret of the High Command and
13 cannot incur any liability in connection with it.

14 There is no evidence to show that the defend-
15 ant agreed to initiation of the war against the United
16 States and Great Britain with the intent of commit-
17 ting aggression. There is no evidence of participa-
18 tion by him in any scheme to use negotiations as a
19 cloak for the making of military preparations. For
20 the evidence shows that he expected, reasonably, that
21 the negotiations would be terminated before the war
22 would be opened by a proper notification, tantamount
23 to a declaration of war, delivered in good season.

24 155. The remaining service of the defendant
25 in the TOJO Cabinet involved no important question

1 except that of Greater East Asiatic relations. The
2 defendant's hostility to his fellow-members of the
3 Cabinet grew as a result of the dictatorial policy of
4 the government, domestically and vis-a-vis the coun-
5 tries of Asia. He finally resigned from the Cabinet
6 on 1 September 1942, the immediate cause being the
7 creation of the Greater East Asia Ministry for the
8 purpose of carrying out the militarists' policies
9 toward Asiatic countries, to which the defendant ob-
10 jected.

11 156. On 9 April 1945 the defendant again
12 became Foreign Minister, in the cabinet of Admiral
13 SUZUKI, having meanwhile been in retirement. His
14 entry into the office was upon the explicit under-
15 standing that it should be the task of the cabinet,
16 led by the Foreign Minister, to work for ending the
17 war. The defendant succeeded in gaining agreement of
18 the Supreme Council for the Direction of War to his
19 making efforts for peace; several of these were put in
20 train, but came to nothing. After issuance of the
21 Potsdam Declaration the defendant earnestly insisted
22 upon its acceptance; his view prevailed when the
23 Emperor made the decision that it be adopted.

24 157. The Potsdam Declaration the prosecution
25 would, at this late date, amend: they interpret it,

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25 would, at this late date, amend: they interpret it,

1 in submitting their case, as providing for the im-
 2 position of "stern punishment" upon those whom they
 3 clect to charge⁷⁶⁹. its original intention of
 4 "stern justice" requires that the guilt of the de-
 5 fendant TOGO be tested by application of some rules
 6 of law, which this Tribunal must find or create. For
 7 our purposes, we are content to accept those propos-
 8 ed by this prosecution itself.

9 Applying them, we find that this defendant
 10 is absolved of any guilt for the Pacific war, with
 11 which alone he can be considered now to stand charged.
 12 The prosecution have contended that the initiation of
 13 war on 8 December 1941 was nothing more than execu-
 14 tion of the policy adopted by the Imperial Confer-
 15 ence of 6 September of that year: the TOJO Cabinet
 16 adopted that decision "in its most important points,
 17 namely that war had to be the alternative, and that
 18 a deadline for commencement of war had to be set."⁷⁷⁰

19 The prosecution's doctrine is that no man is guilty
 20 of crime against peace "because of any act committed
 21 or any statement made by him in the course of his
 22 official duties pursuant to an already established
 23 policy if those matters were his only connection
 24 with that aggressive policy."⁷⁷¹ Mr. TOGO had no
 25

(769. Summation, §21, Tr. 38,965
 770. Id., SXX-63, Tr. 42,000-01
 771. Summation, §K-3, Tr. 40,539)

1 other connection with the policy of 6 September, for
2 the prosecution have admitted that he "did not join
3 in any conspiracy before he joined the TOJO Cabi-
4 net," ⁷⁷² which was in October. Accepting the prosec-
5 ution's contention, doctrine and admission here
6 stated, there can be no liability for any crime of
7 aggression. Rejecting the contention -- that the 6
8 September policy was carried out -- and considering
9 that new policy was adopted, we find Mr. TOGO's
10 part in adopting it to have been that of opposing
11 aggression and war.

12 This dilemma into which the prosecution have
13 worked themselves is the final demonstration of the
14 fallaciousness of their whole "conspiracy". They
15 have come face to face with a hard fact of national
16 life which even they cannot ignore, but have had to
17 admit the existence of. This fact is the continuity
18 of diplomacy, that there is always in affairs of
19 state a historical background which cannot be ignored,
20 a current which cannot be diverted by an individual
21 or two. The way a thing has been done, a problem
22 solved, binds those coming after. This fact of
23 course plays havoc with a theory of conspiracy in
24 which each member appears in his turn and plays his
25 (772. Tr. 35,352)

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25 (772. Tr. 35,352)

1 part, acting at his own free will. This the prose-
2 cution have had to recognize in laying down their
3 doctrine quote above. This it is which exposes
4 finally the futility of the prosecution's tortuous
5 arguments developed from their speculations whether
6 Mr. TOGO was "fully informed" when he entered the
7 TOJO Cabinet of the policies which had theretofore
8 been adopted⁷⁷³. The answer, already given by them-
9 selves, is, "it doesn't matter" -- nor does it matter
10 whether he did in fact, as is alleged, "make these
11 policies his own" (though obviously he did not). By
12 prosecution doctrine also Mr. TOGO as Foreign Minis-
13 ter must be adjudged guiltless in the matter of
14 prisoners of war. The Foreign Minister having neither
15 duty nor power to control prisoners, to prescribe
16 their treatment or to alter it, to inspect their
17 condition, his lack of responsibility can be rested
18 on the single clause of the prosecution's doctrine,
19 "responsibility for an act follows the power and
20 duty to do the act."⁷⁷⁴

21 158. It seems that now everyone was a
22 "peace-lover", all were anti-militarist. The difference
23 in Mr. TOGO's case is that he is proved to have worked
24

25 (773. Summation, §WW-17, Tr. 41,986

774. Id., §K-20, Tr. 40,565)

1 for peace and against the militarists -- often against
2 the opposition of some of these same Johnnies-come-
3 lately. While Mr. TOGO for fifteen years that are
4 shown by the evidence ingeminated peace, these were
5 idle bystanders, looking on while he fought the
6 militarists. They who now assert their merit in
7 having resisted war -- little did they even compre-
8 hend the meaning of his fight! They have noted the
9 present plight of Japan, perhaps? That is the mean-
10 ing of it. If ever these indifferent bystanders had
11 come to his support, had really worked for peace,
12 they might have saved their country and themselves
13 as well. If Mr. TOGO's proposed foreign policy for
14 Japan in 1933 had been adopted, the history of the
15 Far East might well have been different. If these
16 peace-lovers had, with him, opposed the German al-
17 liance, Japan might today be still a proud, happy
18 and respected Power. If these idle on-lookers had
19 come to his support in the Liaison Conference of
20 1941 when it was a question of relaxing Japan's con-
21 ditions to avert war, they might now have some sub-
22 stantial claim to have won merit.

23 Mr. TOGO said in his testimony here that
24 "I have fought throughout my life for what I
25 thought was right, and now at the end of it I

1 an determined, for the sake of history as well
2 as the purposes of this Tribunal, to the best
3 of my ability and recollection to tell the full
4 truth as it is known to me, neither attempting
5 to evade responsibility which is mine nor
6 accepting that which others would transfer
7 to me" ⁷⁷⁵ .

8 The Tribunal has seen that what Mr. TOGO "thought was
9 right" was those principles which general morality
10 approves; it has seen that he has indeed fought for
11 it throughout his life. The Tribunal has seen, under
12 its very eyes, that the fight continues. Here is
13 obviously a man who has made enemies; and by those
14 enemies he may be known. His enemies are the mili-
15 tarists; and why not? For he is, as Admiral
16 SUZUKI said simply but expressively, "a man known
17 to have opposed war." ⁷⁷⁶ That has been his life's
18 work, until by the irony of circumstances he has
19 come to be cast into the same dock with those against
20 whom he has fought.

21 A defense counsel once, in cross-examining
22 Mr. TOGO, suggested that his testimony verged on the
23 incredible when it showed that he had won a point over
24

25 (775. Tr. 35,717
 776. Tr. 35,591)

1 so powerful an autocrat as the Chief of the Naval
2 General Staff⁷⁷⁷ . . He forgot, even a brigand can be
3 controlled by force of character. As my last word,
4 I want to suggest to the Tribunal that that is the
5 clue to the case of TOGO, Shigenori. We can say that
6 he was, certainly not the only such, but one of few
7 men of character and principle shown by evidence here
8 to have occupied important office in Japan. We can
9 say, specifically a propos of the Pacific War -- which
10 is his case -- that he was the only man in office in
11 Japan in the days leading to Armageddon who insisted
12 on moderation of Japan's terms to bring the Japanese-
13 American negotiations to success; who insisted that
14 even if negotiation failed, war need not follow;
15 who insisted that if war must come, even in self-
16 defense, it must be commenced in the open and above
17 board way. He was, we can say, the only man in of-
18 fice in Japan who insisted during the war on pursu-
19 ing an equitable and moderate East Asiatic policy.
20 We can say that he was the man in office in Japan
21 who not only insisted from its first day on ending
22 the war, but made the necessary desperate and cour-
23 ageous effort which resulted in ending it. Can we
24 not say on the evidence that he was the only man in
25 (777. Tr. 35,855)

office in Japan who from 1928 to 1945 consistently
and stubbornly insisted on sincere observance of
international good faith and morality, fought ag-
gression and militarism.)

What shall be his reward?

1 I proceed with the summation on behalf of
2 the defendant UMEZU Yoshijiro.

3 INTRODUCTORY

4 Section 1. General UMEZU Yoshijiro has been
5 a soldier throughout life. If he has been a soldier,
6 and nothing more; carrying out the duties of a sol-
7 dier's profession--an honorable profession, if we may
8 judge from the fact of two representatives of it be-
9 ing on the bench of this Tribunal--if he trained him-
10 self to defend his country, carried out his orders
11 faithfully and honorably, and never passed the bounds
12 of a soldier's duty to meddle with the making of the
13 policies of his country or to promote aggression
14 against another, he must be adjudged not only an inno-
15 cent man, but one deserving of praise. If he has been
16 a soldier, and nothing more, there is no reason for
17 him to have spent two years of his life here in this
18 dock. By the prosecution's own test, as stated by
19 them after due consideration in their summation, we
20 propose to demonstrate that General UMEZU has earned
21 this character.
22

23 The prosecution put it this way:

24 ". . . no man has been charged with either
25 crimes against peace or conventional war

1. Ex. 129 (T. 803).

1 crimes and crimes against humanity unless he is
2 in some way responsible for the aggressive
3 policy followed by Japan, which gave rise to
4 those crimes. No man has been charged in this
5 proceeding because of any act committed or any
6 statement made by him in the course of his of-
7 ficial duties pursuant to an already established
8 policy if those matters were his only connection
9 with that aggressive policy. No military man
10 in the field has been charged with the crimes
11 pertaining to aggressive war merely because he
12 carried out military operations during the
13 course of an aggressive war, being pursued by
14 his government. He has been charged with such
15 crimes only if he participated in the formulation
16 of the aggressive policy of the government, or
17 if he, in the first instance, induced the ag-
18 gression which was subsequently made the policy
19 of the government.²"

20 We shall trace General UMEZU's career through-
21 out the period treated by this Indictment with the
22 purpose of showing that in no instance of a policy of
23 Japan's which is contended to have been aggressive did
24 he participate in or contribute to its formulation;
25

2. Summation SK-3 (T. 40,539-40).

that he deliberately and of conviction avoided, no matter what his military position or assignment for the time being, being lured from his soldier's duties or drawn into a connection with the making of such policies; that he faithfully and sincerely observed the injunction of the Meiji Emperor in the celebrated Rescript to the Soldiers and Sailors, that they

"neither be led astray by current opinions nor meddle in politics, but with single heart fulfill your essential duty of loyalty, and bear in mind that duty is weightier than a mountain, while death is lighter than a feather. Never by failing in moral principle fall into disgrace and bring dishonor upon your name."³

Section 2. After these weary months of trial, the Tribunal can have little doubt why General UMEZU is on trial here. They must recognize that he is no criminal. But he is, with one minor exception,⁴ the only living ex-chief of the General Staff of the Japanese Army. He is here as a representative of that organization, military in form and in intention, which has here been proved to have been in fact the force

23. Ex. 3465 (T. 33,284, not read).

4. General TOJO occupied the post from February to July 1944, but he was concurrently Premier and Minister of War. Ex. 128 (T. 797).

that ruled Japan in the decade leading up to the Pacific

1 War. The prosecution have admitted the power of the
2 Japanese High Command--the General Staffs of Army and
3 Navy: that "Japan had no political organ which could
4 restrain the High Command from plunging the nation
5 into hostilities"; but that it "effectively controlled
6 the cabinet." It is as Chief of the Army General Staff
7 that General UMEZU is charged; it is as the supposed
8 mortal embodiment of the sinister power of that or-
9 ganization that he is here. He is not selected as a
10 defendant in his capacity of Commander-in-Chief of the
11 Kwantung Army, including the one among their number
12 who in recent years has led that army in battle, are
13 not here. General UMEZU has served as Vice Minister
14 of War, but fully a dozen men who have served in that
15 capacity during the period of this Indictment are not
16 before the Tribunal as defendants; he commanded an
17 army in China, but a score of former army commanders
18 in China, or in the Pacific War, have not been placed
19 in the dock. It is indubitably as a chief of the Gen-
20 eral Staff that this man has been made a defendant;
21 pulled in by the dragnet and appearing at first glance
22 to be a member of that class presumptively responsible
23 for the aggressive past of Japan, he has been put upon
24

25 5. Summation, SK-15 (T. 40,558).

6. Id., SK-16 (T. 40,559).

1 his trial with no adequate investigation or considera-
2 tion of his views, intention, actions or character. We
3 propose to show that consideration of these things as
4 seen in all the evidence in the case absolves him of
5 any suspicion of having ever in his career been more
6 than a military man, faithful to his trust, not being
7 led astray by current opinions, never meddling in
8 politics, never failing in moral principle; having
9 shown which, we shall insist that his conviction would
10 be tantamount to sentence of outlawry decreed upon
11 those who follow the profession of arms.

12 Section 3. General UMEZU, of course--as we
13 shall see when we reach that period--became Chief of
14 the General Staff only near the end of a lost war,
15 when there was no policy to be made by the General Staff,
16 but only a desperate struggle to avoid annihilation.
17 But the prosecution, having elected to charge him,
18 have in their usual way undertaken to find criminality
19 in his entire career. The attempt has signally failed;
20 evidence against him there is none--his name has been
21 rarely heard indeed in these proceedings--except such
22 as shows him carrying on the routine, proper functions
23 of a soldier, such as negatives any suggestion that he
24 was ever a participant in plans for aggression, such
25 as shows him to have been a business-like, moderate,

professional man. Indeed, we do not find General UIEZU
1 shown by the evidence to have supported one national
2 policy or another, but no more do we find him shown to
3 have opposed them. This is not because he had no opin-
4 ion, no ideas of right and wrong; it is because he
5 minded his business which, it being that of a soldier,
6 he conceived as having no proper concern with national
7 policy. His private expressions of his views of these
8 policies we do find, and they are moderate, peaceful
9 and high-minded. On the rare occasions when his of-
10 ficial duties did require him to take even a peripheral
11 part in the settlement of national policy, his influ-
12 ence (as we shall see) was always exerted in the cause
13 of moderation and peaceful courses. The prosecution
14 would have it otherwise; but, finding no evidence to
15 support their position, are compelled to rely on their
16 own bare assertions in their miserable effort to de-
17 monstrate his guilt. I shall therefore undertake to
18 answer their summation, placing against the prosecu-
19 tions' "it is obvious" and "there can be no doubt" the
20 facts as disclosed by the record.
21

22 Section 4. It will be convenient to divide
23 the discussion of the evidence and the summation against
24 General UIEZU among the various parts of his career
25 which fall within the period of the Indictment herein.

From 1 January 1928 to the Manchurian Incident--during
1 which time, as colonel and major general, he served
2 successively as an officer attached to the General
3 Staff Office, Chief of a section of the War Ministry,
4 and Commander of an infantry brigade--nothing is charged
5 against him herein. The prosecution, however, have
6 conceived the idea of attempting to utilize General
7 UMEZU's activities of this period, concerning which
8 they have introduced no evidence, as in some way prov-
9 ing his entrance into a "conspiracy", thereby enabling
10 them to proceed with the argument of the remainder of
11 their case against him on the assumption that conspir-
12 acy has been established. This is necessary assumption,
13 there being no evidence to suggest entrance into a
14 conspiracy at any later date. It is worth analyzing
15 this argument of the prosecution in detail because--
16 although we have the conclusive answer to it--it may
17 serve as a standard of the value of all their argu-
18 ments against this defendant. The argument runs as
19 follows: In 1928 to 1930 General UMEZU was Chief of
20 the Military Affairs Section of the Bureau of Military
21 Affairs of the War Ministry; the functions of the Mili-
22 tary Affairs Section included certain duties specifi-
23 cally set out in the Imperial Ordinance governing
24 8. Ex. 129 (T. 803).
25

9

organization of the War Ministry; "naturally, these
1 problems were of vital interest to the conspirators
2 and determined UMLZU's active participation in the con-
3 spiracy." ¹⁰ The statement given by them of the duties
4 of the Military Affairs Section is that it included
5 study of general problems of national defense, which
6 is correct as shown by the prosecution's evidence;
7 military research, and "military affairs pertaining to
8 Manchuria and China", which is incorrect as shown by
9 the prosecution's evidence; and "the ideological prepar-
10 ation of the population for war", ¹¹ which is without any
11 support whatever in the evidence. Although it is quite
12 immaterial, what the evidence, in the form of the
13 Imperial Ordinance, shows is that the duties of the
14 Military Affairs Section include among many others
15 these separate things: "matters concerning control-
16 ling of direction of parties researching for military
17 affairs", "matters concerning Army affairs of Manchuria
18 and China" and "matters concerning popularization of
19 national defense spirit." ¹² Upon this we are willing to
20 rest the question of the prosecution's ability or in-
21 tent to state correctly the substance of evidence.
22 It will be noted that the other footnote references
23

24 9. Ex. 74 (T. 684).

25 10. Summation, SY-3 (T. 42,028).

11. Ibid.

12. Ex. 74 (T. 684, page 3, not read).

1 appended to the passage last quoted from the prosecu-
2 tion summation are references to no evidence at all,
3 but to an opening statement of the prosecution itself.
4 This legerdemain of making assertions in their opening,
5 then in summation citing the opening as the proof of
6 their conclusions, is typical of the whole method of
7 this summation against General UMEZU. Characteris-
8 tically, the passage in the opening relied upon as sus-
9 taining the conclusions of the summation does nothing
10 of the sort, being a correct and lawyer-like statement
11 of the content of the evidence which they now attempt
12 to distort.

13 It was a pretty theory, even without benefit
14 of evidence; but it has one fatal flaw. That is that
15 General UMEZU never held the office in question, the
16 whole thing having been nothing but a mistake of trans-
17 lation of his personnel record. As shown by the cor-
18 rected translation of the exhibit, the office which
19 General UMEZU occupied--he was a colonel then--was
20 that of Chief of the Military Administration Section
21 of the same, the Military Affairs Bureau. The prosec-
22 ution will therefore have to guess again concerning
23 the problems of vital interest to the conspirators
24 which General UMEZU was preoccupied with during these

25 13. T. 582-83.

13a. T. 9 April 1948.

years and which determined his active participation in the conspiracy. We do not know, of course, what they will next guess; whatever it may prove to be, it will be supported by the same evidence of his activities--which is none, totally--as in this instance. For their reference, the duties of the Chief of the Military Administration Section, as set out in their exhibit, the same Imperial Ordinance, ^{13b} involve matters of administration--control of military estimates, the establishment, peacetime organization and equipment of the Army, maneuvers and inspections, to pick out a few at random.

This little incident of the imaginary Military Affairs Section Chief is eloquent of the lengths to which the prosecution are willing to go to secure conviction, to prove their cherished "conspiracy", to build a case against this defendant out of pure, undiluted imagination. The actual facts, however, have an interest to his case. This is that his first position as chief of an office was an administrative one; for his later career shows his forte throughout to have been administration. The bearing of this point will become more apparent as we see later that there has been a tendency to place him in positions of grave administrative responsibility at times of stress.

13b. Ex. 74 (T. 684).

GENERAL AFFAIRS DEPARTMENT CHIEF

1 Section 5. The Manchuria Incident occurred
2 shortly after General UMEZU's appointment to the posi-
3 tion of Chief of the General Affairs Department of the
4 General Staff. His designation to that office was
5 dated 1 August 1931; being then on duty as Commander
6 of the First Infantry Brigade, stationed in Tokyo, he
7 may be presumed to have taken up his new duties at
8 once, which would have been approximately six weeks
9 prior to the outbreak of the incident in Manchuria. If
10 there was planning for the incident, he would scarcely
11 have been in time to participate in it; there is no
12 evidence of such participation. The prosecution discuss
13 his connection with the Manchuria Incident in the
14 following language:
15

16 "As the head of one of the most important divi-
17 sions of the General Staff Office, UMEZU took
18 an active part in ensuring the conduct of mili-
19 tary operations for the seizure of Manchuria
20 which were commenced and accomplished during
21 precisely the same period."

22 The proof? That they assert it. Naturally, there is
23 no citation of evidence to this passage; the proof is
24 that the prosecution say so. On the other hand, their
25 14. Summation, SYY-4 (T. 42,029).

opening statements, their witnesses, their documents,
1 failed to say so. In the entire presentation of the
2 Manchuria phase of the prosecution's case, which occu-
3 pied some several weeks of this Tribunal's time, the
4 name of UMEZU was never once mentioned in connection
5 with the incident.¹⁵ No defense evidence produced in
6 connection with the Manchuria Incident ever intimated
7 any slightest connection of General UMEZU with that
8 incident. Even the testimony of the defense witnesses
9 KAWABE Terashiro¹⁶ and KOISO Kuniaki¹⁷, who testified to
10 the actions of the General Staff at the time of the
11 outbreak of the incident, testimony showing efforts
12 at a calm and local settlement, do now show any con-
13 nection of General UMEZU with that matter. It is
14 therefore a reasonable deduction, and the only possible
15 one from the evidence, that he had no connection of
16 any nature with the Manchurian Incident.
17

18 The duties of the General Affairs Department
19 of the General Staff are, in any event, not disclosed
20 by the evidence. The prosecution cite exhibit 78, the
21 reference to the transcript being to page 589; page
22 589 is part of an opening statement, while exhibit 78
23 (which does not appear on that page) is a revision of
24

- 25 15. T. 2,063.
16. T. 19,410-12.
17. T. 32,216-17.

1 the regulations governing the organization of the
2 General Staff Office which does not mention the Gen-
3 eral Affairs Department's duties. This exhibit, stat-
4 ing that "the Director of each Department of the Gen-
5 eral Staff Office is responsible to the Chief, super-
6 intends the heads and others of the sections and con-
7 trols their main duties", leaves us entirely uninformed
8 concerning the scope of the duties of the General Af-
9 fairs Department.

10 The one reference to actual evidence deemed
11 by the prosecution to support their contention that
12 General UMEZU "took an active part in ensuring the
13 conduct of military operations for the seizure of
14 Manchuria" is the proof that he received a decoration
15 subsequently to the incident. It might be supposed
16 that the value of these awards as proof of the support
17 given by the recipients thereof to aggression had been
18 thoroughly exposed. The awards "for meritorious ser-
19 vices during the Manchuria Incident" were bestowed
20 upon 452,826 individuals, including among them Mr.
21 WAKATSUKI, the Premier at the time the incident oc-
22 curred, and his Foreign Minister, Baron SHIDEHARA, both
23 of whom testified in this Tribunal to having fought
24

25 18. T. 684, not read.

19. Testimony of HUKATA Yachiho (T. 28,029).

that incident by every means in their power until
 1 their opposition brought about the fall of their gov-
 2 ²⁰ernment.

3 Section 6. It being during this same stage
 4 of General UMEZU's career that the prosecution allege
 5 a plan to have been made for war against the U.S.S.R.,
 6 we may as well notice that question here. The sole
 7 evidence of this plan for war against the U.S.S.R. is
 8 the testimony of a witness to the effect that "section
 9 chiefs of the General Staff and the War Ministry gath-
 10 ered and planned the expansion of their military power
 11 in order to cope with the U.S.S.R." ²¹ On cross-
 12 examination of this witness by the prosecution, he
 13 explained that the intention of the section chiefs
 14 was "that preparations would be made for a war by
 15 1934, but this did not mean that these plans had as
 16 its object a war of aggression against the Soviet Union."
 17

18 Moreover, "the conclusion was reached that it was in-
 19 possible to put such plans into effect, and these plans
 20 were therefore abandoned." ²² The witness' direct testi-
 21

22 mony had made it perfectly plain that these Japanese
 23 preparations were to be undertaken because of the ex-
 24 tent and speed with which the U.S.S.R. was building up

25 20. Testimony of WAKATSUKI (T. 1,553) and SHIDEMARU
 (T. 1,318).

21. Testimony of KASAHARA Yukio (T. 23,196).

22. T. 23,232.

1 its military power, and the fear that in case of neces-
2 sity Japan would not be able "to cope with" that power.²³

3 The prosecution's allegation that "the Japanese Gen-
4 eral Staff adopted the decision to accomplish war
5 preparation against the U.S.S.R." is not only wholly
6 without foundation in the evidence but, in view of
7 this testimony, is a flagrant example of misstatement
8 of the evidence. Not only is there no proof of this
9 "adoption" by the General Staff; there is no proof
10 that the discussions of the section chiefs were even
11 known to their immediate superiors, the department
12 chiefs, of whom General UMEZU was one, nor that sec-
13 tion chiefs of his department participated in them,
14 which--the department being one having no concern with
15 operational matters--in all probability they did not.

16 THE PRESIDENT: We will recess for fifteen
17 minutes.

18 (Whereupon, at 1045, a recess was
19 taken until 1100, after which the proceedings
20 were resumed as follows:)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Major Blakeney.

4 MR. BLAKENEY: Page 12, Section 7:

5 NORTH CHINA GARRISON COMMANDER

6 It is as commander of the Japanese garrison
7 in North China ²⁴ for a year and a half -- from March
8 1934 to August 1935 -- that General UIEZU is most
9 attacked by the prosecution. Especially significant
10 of the thinness of the case against him is the fact
11 that the evidence even here is confined to one incident,
12 the so-called Ho-UIEZU Agreement. The prosecution's
13 evidence concerning this "agreement" is not very
14 satisfactory; their summation of surprise and supposition
15 is by far less so. The facts are simple enough; but
16 they fail to fit the concept of General UIEZU as a
17 leader of aggression, so require considerable dis-
18 tortion and misinterpretation by the prosecution.

19 The prosecution's evidence concerning the Ho-
20 UIEZU Agreement" consists chiefly of four things.

21 First is the testimony of General T. NAMI, Ryukichi,

22 24. Occasional references to him as "Commander of
23 the China Expeditionary Army" (e. g., Summation,
24 SE-3, T. 39195) are doubtless slips of the pen,
25 there having been no "China Expeditionary Force"
until some time after the commencement of the
Chir Incident.

1 which we shall discuss in some detail presently.

2 There is an ex parte, undated Chinese document, the
 3 objective character of which may be surmised from
 4 its title, "Summary of Japanese War Crimes in China
 5 from 18 September 1931 to 13 August 1937";²⁵ an album
 6 of clippings from American newspapers;²⁶ and the
 7 testimony of a newspaper reporter who is a self-
 8 styled authority on affairs political and military
 9 of the North China of the nineteen-thirties.²⁷ None
 10 of this evidence purports to sustain the prosecution's
 11 main premise, that as commander of the North China
 12 garrison UHEZU "concentrated his efforts on the
 13 accomplishment of the next objects of the conspiracy,
 14 to wit: further extension of Japan's domination in
 15 China; separation of China's northern provinces; and
 16 the establishment of a pro-Japanese puppet regime in
 17 North China."²⁸

18
 19 This evidence, as manipulated by the prosecu-
 20 tion, does profess to establish that as a result of
 21 the assassination of two Chinese within the Japanese
 22 Concession in Tientsin the chief of staff of the
 23 Japanese garrison, Colonel SAKAI, called on a Chinese

24 25. Ex. 194 (T. 2274).

25 26. Ex. 2206-A (T. 15769).

27. Testimony of John Goette (T. 3722-3, 885).

28. Summation, SYY-6 (T. 42030).

1 official, General Ho Ying-chin, and presented certain
 2 demands. It must be understood from the outset, what
 3 Chief of Staff SAKAI did in the matter General UIEZU
 4 is responsible for; there can be no doubt of that,
 5 and General UIEZU would not wish me to suggest other-
 6 wise. Whether SAKAI acted without orders or in excess
 7 of them is no matter; for any actions of his as chief
 8 of staff of the garrison, the results of which were
 9 accepted and not repudiated by the Japanese, his com-
 10 manding officer is responsible. But what demands did
 11 Colonel SAKAI present to General Ho? The prosecution
 12 state it, on the ostensible authority of the Chinese
 13 "Summary of Japanese War Crimes," that Colonel SAKAI,
 14 "threatening to take drastic measures, demanded"

15 ^{29.} various things. The document in evidence contains
 16 a significant difference: that SAKAI said in regard
 17 to the assassinations that "if such actions, unfavor-
 18 able to Japan and 'Manchoukuo,' should continue to
 19 occur, then the Japanese Army would probably take
 20 drastic actions. They further "demanded" certain

21 ^{30.} things. There is nothing in even this tendentious

23 29. Summation, SYY-7 (T. 42,031). The statements in
 24 Summation, SE-3 (T. at 39,195) are for the most
 part even more at variance with the evidence.

25 30. Ex. 194 (T. at 2275).

Document to indicate that the demands were accompanied with any threat of action to be taken if they were not complied with; the threat, if such it can be considered, was of what might happen if in future such incidents were repeated.

The Chinese, the summation continues, substantially satisfied these demands; "nevertheless, on 29 May 1935 UIEZU again dispatched his Chief of Staff SAKAI, to General Ho demanding" additional action on the part of the Chinese, failing which the Japanese Army "would take unrestricted actions." Here General UIEZU first comes into the matter. "These demands, made in the form of an ultimatum were published by the press."³¹ While it is immaterial what a newspaper may publish, none of the citations to this passage sustains or even suggests what is there alleged. "The press also carried the news of UIEZU's cancellation of the dispatch of troops to Japan (scheduled for 15 July, 1935), in view of a 'critical situation existing.'"³² What is not mentioned is that the newspaper by whose reports the prosecution wish to prove events in far-off China is the Tines-Pienyung, of New Orleans, Louisiana.³³

31. Summation, SYY-8 (T. 42031).

32. Ibid.

33. Ex. 2206-A (T. at 15776).

1 "On 1 June 1935, UEZU conferred with War
 2 Minister HAYASHI and Commander-in-Chief of the Kwantung
 3 Army HINAMI in Hsingking. It is beyond any doubt
 4 that this conference was devoted to coordination of
 5 action in regard to the extension of Japanese aggres-
 6 sion in China and to exerting further resolute pres-
 7 sure upon the Nationalist Chinese Government."^{34.}

8 There is, naturally, no citation of evidence to this
 9 pontification; not that evidence does not exist, but
 10 that it places beyond any doubt that no such thing
 11 occurred. General HINAMI himself testified regarding
 12 this meeting -- or, to be exact, that there was no
 13 meeting: that the Minister of War visited Hsingking,
 14 that General UEZU came from Tientsin on invitation
 15 of the Minister of War, reported to the Minister,
 16 called on General HINAMI to convey his greetings, and
 17 returned to his post the same day, even declining the
 18 suggestion that he stop for dinner.^{35.} The testimony
 19 of General NISHIO, at that time chief of staff of the
 20 Kwantung Army, is corroborative in every particular.^{36.}
 21 We may answer with silence the prosecution attempt to
 22 suggest that the visit of General UEZU to Hsingking --

23 34. Subration, SYY-9 (T. 42032).

24 35. T. 19986-87.

25 36. Testimony of NISHIO, Toshizo (T. 38868-89).

1 which they assert on the authority of the New York
 2 Herald Tribune to have been 1 June,^{37.} but which the
 3 evidence discloses to have been 29 May^{38.} (the
 4 Herald Tribune knew the subject of the conversations
 5 at the meeting, but makes no mention whatever of its
 6 date³⁹) -- had some connection with planning the
 7 "ultimatum" which by their contention was presented
 8 in Tientsin on 29 May, or two days earlier. "On
 9 9 June 1935, upon the conclusion of negotiations
 10 with General Ho the press published a statement made
 11 by UMEZU to the effect that Japan's further actions
 12 would depend upon the sincerity of the Chinese in
 13 granting the Japanese 'requests.'^{40.} Unfortunately
 14 for this assertion the statement "published by the
 15 press" -- it is again the Times-Picayune⁴¹ -- of what
 16 happened "on 9 June 1935" was dated 7 June 1935, or
 17 two days before the prosecution's "conclusion of
 18 negotiations" on the 9th. Or do they think it to
 19 have been the 9th? "On 10 June 1935. . . the 'Ho-
 20 UMEZU Agreement' was concluded . . ."^{42.}

22 37. Summation, SE-6 (T. 39198).

23 38. Testimony of ISHIKAWA (T.)

24 39. Ex. 2206-A (T. 15777).

25 40. Summation SY-9 (T. 42032).

41. Ex. 2206-A, page 9 (not read).

42. Summation, SY-10 (T. 42032).

1 All this, say they, "was corroborated by the
 2 witness John Goette,"^{43.} whose testimony we shall now
 3 analyze. The strong anti-Japanese bias and opinionated
 4 tone of his entire testimony first put us on our guard;
 5 the extent of his knowledge, at least of the "Ho-
 6 ULEZU Agreement," as clarified on direct as well as
 7 cross-examination, is an excellent proof, if any were
 8 needed, of the value of all these newspaper reports
 9 on conditions in China. For this man was a reporter --
 10 "the dean of correspondents in North China,"^{44.} he
 11 proudly announces. The ignorance of which such a
 12 dean is capable is amazing. For twenty-one years a
 13 correspondent in North China; qualified, "as military
 14 matters became uppermost in Chinese affairs," in
 15 then; "in and out of the Japanese Embassy, I should
 16 say, practically daily, for the whole twenty years,"
 17 and in "regular contact with the Japanese military
 18 attache of the Embassy in Peiping";^{45.} willing to
 19 agree that the "Ho-ULEZU Agreement" was one of the
 20 important events of the decade of the '30's of North
 21 China^{46.} -- he nevertheless did not know that General
 22 ULEZU was commander of the Japanese garrison,
 23
 24

43. Summation, SYY-11 (T. 42033).

44. T. 3723.

45. T. 3722-28.

46. T. 3810.

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 23
 24

43. Summation, SYY-11 (T. 42033).

44. T. 3723.

45. T. 3722-28.

46. T. 3810.

1 stationed in Tientsin for more than a year⁴⁷ at the
 2 time of the "Ho-UMEZU Agreement," but "presumed" that
 3 he was there "on a special mission for the Japanese
 4 Army."⁴⁸ He was "quite sure" that Ho Ying-chin was at
 5 the time Minister of War of China⁴⁹ -- though the
 6 evidence in the record, from Chinese sources, shows
 7 General Ho at that time, so far from being Minister
 8 of War of China, to have been "Acting Chairman of the
 9 Peiping Branch Council of the National Military Coun-
 10 cil."⁵⁰ The witness states that as a "result" of
 11 the "Ho-UMEZU Agreement" two Chinese armies were
 12 withdrawn southward,⁵¹ and he is "quite sure" that
 13 one of them was the 32d;⁵² but again he is contradicted
 14 by the prosecution's other evidence, which shows one
 15 army to have been withdrawn, and it the 51st.⁵³ This
 16 much on the dean's general knowledge of those military
 17 affairs of North China on which, they being "uppermost
 18 in Chinese affairs," he had made himself an expert.

20 Coming to the "Ho-UMEZU Agreement," his
 21 ignorance is still more striking, especially when we

22 47. Exhibit 129 (T. 803).

23 48. Ibid.

49. T. 3746, 3810.

24 50. Exhibit 210, page 1 (not read).

51. T. 3606.

25 52. T. 3748, 3809.

53. Exhibit 194 (T. at 2276).

remember that he had come to Japan especially to
 1 serve as a witness in this trial, knowing what matters
 2 he would be testifying to. He didn't know whether the
 3 "agreement" was written or oral,^{54.} and admitted that⁵⁵
 4 "I cannot personally testify to any of the terms";
 5 all that he even pretended to be able to do was to
 6 state a post hoc, ergo propter hoc syllogism: "it
 7 was generally accepted that it was a series of demands⁵⁶
 8 made by the Japanese and acceded to by the Chinese";
 9 "I do know what was carried out thereafter";⁵⁷ that
 10 therefore must have been the "agreement." He testi-
 11 fied that Chinese officials told him "that they were
 12 under Japanese threat of full military occupation of
 13 that area unless they made the agreement";⁵⁸ but he
 14 could give the name of no Japanese who was reported
 15 to have made such a threat,^{59.} and admitted that
 16 although he had discussed the whole situation with
 17 General Ho, the General had said nothing to him of
 18 any such threats.^{60.} The witness' bias has led him
 19 to the point even -- as is apparent from comparison of
 20 his testimony with the Chinese claims -- of making
 21
 22 54. T. 3748.
 23 55. T. 3806.
 24 56. T. 3748.
 25 57. Ibid., 3806.
 58. T. 3747.
 59. T. 3811.
 60. T. 3812.

1 allegations going beyond any which the Chinese
2 themselves made. The entire testimony of this wit-
3 ness is the best commentary on the value of these
4 farragoes of gossip, rumor and hearsay in the form of
5 newspaper accounts, written by him and his brethren,
6 which the prosecution have been and are all too ready
7 to rely upon for conviction of these defendants on
8 capital charges. We may perhaps assume, from the
9 Tribunal's rejection of similar newspaper accounts
10 when presented by the defense, that the probative
11 value of all of them has been decided to be nil:
12 if this be an incorrect assumption, it will suffice
13 to refer the Tribunal, for demonstration of the
14 accuracy, objectivity and balance of this type of
15 "evidence," to any morning's account, in the local
16 English-language press, of the previous day's pro-
17 ceedings in this courtroom.

18
19 And at this point I must interrupt myself to
20 say that this morning's newspaper provides the timely,
21 perfect, and final commentary on the propriety of
22 staking men's lives on the accuracy of these press
23 reports. It has quoted me as having yesterday
24 "conceded" before this Tribunal that the Japanese
25 note served in Washington on 7 December 1941 "was not
a declaration of war under international law."

Let us consider the facts of this "agreement."

1 There is no evidence -- as distinguished from the ex
2 parte Chinese assertion -- of any threat's having been
3 made by the Japanese in connection with the "demands"
4 upon the Chinese; the evidence on the contrary is that
5 the "demands" were "representations" made to the Chinese
6 in the endeavor to improve conditions in North China
7 and to avoid recurrence of incidents which might be
8 injurious to relations, then good,⁶¹ representations which
9 General Ho, apparently recognizing the danger to good
10 relations, acceded to. It is, of course, easy for
11 the purposes of exacting revenge or securing a conviction
12 to make the linguistic transition from "advice" or
13 "request" to "demand" and "threat"; but there is not a
14 trace of evidence of such demands or threats. It was
15 testified for the defence (by a witness, on the spot
16 at the time, not cross-examined by the prosecution) that
17 it did not occur so.⁶² The "evidence" relied on by the
18 prosecution to establish the existence of demands, or
19 an "ultimatum," as they like to call it, is ludicrous.⁶³
20 First is the testimony of KUWASHIMA, Kazue, who is
21 alleged to have testified "that, as he learned them from
22 the Peking Legation, these were strong demands, in
23
24

25 61. Testimony of KUWASHIMA, Kazue.

62. Testimony of ISHIKAWA, Jun (Tr. 20,786-88).

63. Summation, §E-3 (Tr. at 39,195-96).

1 substance an ultimatum." KUWASHIMA testified to no
2 such thing, in connection with the "Ho-UMEZU Agreement."
3 His testimony concerning it was that while "I know
4 nothing about the Ho-UMEZU Agreement,"⁶⁴ he recollected
5 it as having been the "result of a considerably strong
6 demand but I do not think it had a time limit."⁶⁵
7 "A considerably strong demand" is hardly the prosecu-
8 tion's "ultimatum." And the witness -- unfriendly
9 though he obviously was to the army, and especially
10 the army in the China of those days when he was consul-
11 general there -- gave this explanation of the circum-
12 stances in which the "agreement" was made:

13 "At that time when the Commanding General,
14 UMEZU, was about to leave for Hsingking or for some
15 other place his chief of staff told him that in his
16 opinion, that is, in the opinion of the chief of staff,
17 a rather friendly and moderate warning should be given
18 and to this General UMEZU replied, according to the
19 information I received at the time, that if that was the
20 case it would be excellent."⁶⁶
21

22 Second of the prosecution's evidences of the
23 existence of the "ultimatum" is that "the demands were
24 known to the newspapers which characterized them as

25 64. Tr. 29,530.

65. Ibid., Tr. 29,496.

66. Tr. 29,497.

containing all the features of an ultimatum." ⁶⁷ Although,
1 as we have already seen, the "dean" of the reporters
2 supplying these rumors to the newspapers, admitted that
3 he did not know the terms of any such demands, there
4 are one or two points of interest in these newspaper
5 reports. ⁶⁸ The language of the summation, "containing
6 all the features of an ultimatum," is not the prosecu-
7 tion's description of the content of the newspaper
8 reports, but is the reporter's own conclusion -- no
9 effort is made by the reporter to state these "features"
10 or to give any basis for his conclusion. The only
11 "feature" mentioned is that of a time limit: for the
12 newspaper speaks of "demands containing all the features
13 of an ultimatum except a definite time limit." ⁶⁹ Thus
14 is defeated the prosecution's earnest effort to con-
15 vince the witness KUWASHIMA in cross-examination ⁷⁰
16 that a time limit did exist.
17

18 The last of the prosecution's proofs concerning
19 the ultimatum is the diary of Marquis KIDO, whose infor-
20 mation is stated to have been obtained from reading
21 the morning newspaper. ⁷¹ That if Colonel SAKAI had served
22 "demands" or an "ultimatum" on the Chinese, he had taken
23

24 67. Summation, §E-3 (L).

25 68. Ex. 2206-A.

69. Id. page 2.

70. Tr.

71. Ex. 2192 (Tr. 15,733).

1 advantage of his commander and acted in direct contra-
2 diction to what he knew General UMEZU's desires, as
3 well as his own instructions, to be, is shown also by
4 the entry in the HARADA Memoirs, which in this instance
5 do for once accord with the known facts, of the report
6 which reached Tokyo:

7 "Moreover, I met the Premier and he said: 'The
8 North China issue will be settled with all demands
9 acceded to. As in many cases, when I (Premier) inquired
10 into the matter, I found out that just before General
11 UMEZU entrained for Hsingking, Chief of Staff SAKAI said
12 to him (UMEZU): "I would like very much to issue an
13 exceedingly light, friendly warning during your absence.
14 What do you think?" To this, Commander UMEZU replied:
15 "If that is the case, it will be all right." From the
16 foregoing, such a serious thing resulted.'"⁷²

17
18 In point of fact, an incident in connection
19 with the "Ho-UMEZU Agreement" well illustrates General
20 UMEZU's attitude toward the use or threat of force
21 against the Chinese in general. At some point in nego-
22 tiations with General Ho, Chief of Staff SAKAI had made
23 the suggestion of concentration for its moral effect of
24 the Japanese garrison forces in Peking; but General UMEZU
25 vetoed the plan, "saying that it was not proper to make

a demand by force of arms."⁷³

1 . Consider how plausible are these "threats" under
2 which the Chinese acted: the witness Goette admitted
3 that the Japanese forces in the area were not over
4 2,000 men in the Peiping area (the United States also
5 had about 2,000 troops there)⁷⁴, or "within 10,000"
6 including Tientsin; while one Chinese Army alone, the
7 29th, had a strength of "around 25,000."⁷⁵ This was only
8 one of several Chinese armies in the neighborhood prior
9 to the "agreement," there being also at least the 51st
10 which was withdrawn, the 32d which the witness thought
11 to have been withdrawn, and one other,⁷⁶ or perhaps 100,000
12 men in all. What must make it perfectly obvious that
13 there was never a threat or anything more than voluntary
14 agreement between the Chinese and the Japanese is the
15 fact that no evidence was ever produced of any complaint
16 by General Ho concerning this matter, notwithstanding he
17 was for several days in Tokyo and available as a witness,
18 actually during the presentation of evidence by the
19 prosecution in its China phase. But this prosecution
20 prefers to prove its case by newspaper cuttings. The
21 defense endeavored to obtain the testimony of the other
22

24 73. Testimony of ISHIKAWA (Tr. 20,789-90).

25 74. Testimony of Joseph Ballantine (Tr. 10,907).

75. Tr. 3807-8.

76. Tr. 3806, 3808-9.

1 party to the Ho-UMEZU transaction -- the then Chief of
 2 Staff SAKAI -- but unsuccessfully. Evidence was intro-
 3 duced to show that he was executed by the Chinese, after
 4 our subpoena was delivered to their representative here
 5 and "wired to Nanking," the intervening time of eight
 6 days being "insufficient to obtain the desired stay of
 7 execution through the necessary channels." ⁷⁷ The gross
 8 impropriety of the prosecution's statement, in the
 9 absence of proof of the charges, evidence or verdict in
 10 his case, that "the fact of General SAKAI having been
 11 convicted and executed in 1946 for acts of aggression
 12 against China shows how heavy were the crimes committed
 13 by him in accordance with the direct instructions of
 14 the accused UMEZU" ⁷⁸ need not even be commented on.

15 Above all, there is no showing that the "Ho-
 16 UMEZU Agreement" constituted in any way a restriction
 17 of Chinese sovereignty. As Goette's testimony itself
 18 shows, there remained after the execution of the "agree-
 19 ment" ⁷⁹ at least two Chinese armies in the area; these
 20 were under command of General Sung Che-yuan, Chairman
 21 of the Hopei-Chahar Political Council and appointee of
 22 Generalissimo Chiang; ⁸⁰ and there was as a consequence

24 77. Ex. 3694 (Tr. 36,885).

25 78. Summation, SY-74.

79. Tr. 3606.

80. Tr. 3749, 3806, 3808.

of the "agreement" no substitution of Japanese authority⁸¹
 1 over the area for Chinese. The prosecution have pro-
 2 duced an elaborate argument designed to prove that
 3 General UMEZU, as commander of the North China garrison,
 4 was an "author" of the "autonomy movement" in North
 5 China,⁸² that the "Ho-UMEZU Agreement" was a first step
 6 in the plan of separation of North China from Nanking's
 7 control, that the "result" of the "agreement" was that
 8 "Japan established complete control over the provinces
 9 of North China,"⁸³ and that General UMEZU approved that
 10 result. Every item of this argument is demonstrably
 11 false.

12 There is no proof whatever that General UMEZU
 13 ever planned or supported any autonomy movement. All
 14 the evidence shows that he practiced that which he
 15 frequently expressed,⁸⁴ that Japan should respect China
 16 and adopt a fair attitude toward her, not meddling in
 17 her internal affairs or interfering with the rights
 18 of third powers in North China, never resorting to threats
 19 or coercion toward China. The entire argument that the
 20 defendant UMEZU had any connection with an autonomy
 21 movement hangs on the testimony of TANAKA, Ryukichi,

- 22
 23 81. Tr. 3750.
 24 82. Summation, SE-2 (Tr. 39,192).
 25 83. Summation, SY-12 (Tr. 42,033).
 84. Testimony of ISHIKAWA (Tr. 20,785).

1 once major general of the Japanese Army and Johnny-on-
 2 the-spot extraordinary. He was a staff officer of the
 3 Kwantung Army in the spring of 1935, and says that
 4 he is "very well versed in the autonomous movement in
 5 North China" -- because, be it noted, of his experience
 6 with that matter in the Kwantung Army, where it was
 7 being worked on ⁸⁵ (the witness KUWASHIMA confirmed that
 8 the autonomy movement was carried out by the Kwantung
 9 Army). ⁸⁶ He contradicts the prosecution's assertion
 10 in summation that "the work was divided between the
 11 two armies, the army in North China taking the five
 12 provinces of North China, and the Kwantung Army taking
 13 Inner Mongolia"; ⁸⁷ for, says TANAKA, "as far as the
 14 Kwantung Army was concerned, the intention was to create
 15 a regime in Inner Mongolia and another in North China
 16 and all the provinces related with the autonomous move-
 17 ment were Hopeh, Shantung, Shansi, Chahar and Suiyuan." ⁸⁸
 18 The whole testimony of TANAKA, in fact (except for one
 19 unfortunate statement), shows that during General UMEZU's
 20 period of command in North China the autonomy movement,
 21 if it existed, was the business of the Kwantung Army
 22 and had nothing to do with the North China garrison. The

24 85. Tr. 2024-25.

25 86. Tr. 29,532-33.

87. Summation, §E-2 (Tr. at 39,193).

88. Tr. 2026.

witness' unfortunate statement is one which discloses
1 the entirety of his testimony on this matter to be the
2 merest hearsay, full of inaccuracies and lacking in
3 probative value altogether. In answer to the question,
4 "To your personal knowledge, did General UMEZU have
5 anything to do with this Autonomous Movement?" he
6 answered:

8 "A In general, General UMEZU let matters con-
9 cerning the Autonomous Movement in the hands of his
10 Chief of Staff, Colonel SAKAI, Takashi, but it is a
11 fact that as commander he controlled the Autonomous
12 Movement.⁸⁹

13 Asked what, if anything, General UMEZU did
14 with reference to the autonomy movement -- how he
15 "controlled" it -- the witness plunged in:

16 "A First, the UMEZU-Ho Ying-chin Pact of
17 June, 1935." (He never got to the mention of "Second"
18 or "Third.")

19 "Q What was the effect of that pact, if you
20 know?

21 ".

22 "A The effect of this pact was that the
23 armies of the Nanking Regime all evacuated southward"
24 (corrected by the monitor to "evacuated from North China"
25 89. Tr. 2035.

1 to south") "and North China came under the control of
2 armies not under the direct leadership of the Nanking
3 Regime; that is, the Hopei- Chahar armies under Sung
4 Cheh-yuan."⁹⁰

5 After this answer the prosecutor dropped the
6 subject of the "Ho-UMEZU Agreement," never to return to
7 it in questioning this witness. With every good reason;
8 for it demonstrates the witness' total ignorance of the
9 matter. As the Chinese and American evidence of the⁹¹⁹²
10 prosecution shows, the armies of the Nanking regime by
11 no means "all evacuated from North China," but only a
12 small part of them did so; as the prosecution's evidence
13 discloses, North China did not come "under the control
14 of armies not under the direct leadership of the Nanking
15 regime," but remained held by armies of Sung Cheh-yuan,
16 who as we have seen above was the appointee and regional
17 representative of Chiang Kai-shek's government.⁹³

18
19 On the other hand, even the witness TANAKA did
20 not try to pretend that General UMEZU had himself any
21 connection with the "autonomy movement"; what he said
22 was that it was SAKAI's field, and that in a military
23 organization SAKAI's superior must be responsible for

24 90. Tr. 2035-36.

25 91. Ex. 194 (Tr. at 2276).

92. Testimony of Goette (Tr. 3749, 3806).

93. Id. (Tr. 3806).

1 his acts. He repeatedly said that Colonel SAKAI, the
2 Chief of Staff, was the proponent of the movement, and
3 that General UMEZU "left the matter entirely up to
4 SAKAI."⁹⁴ This latter is the witness' own conclusion,
5 for he makes no attempt to explain how he knew "very
6 definitely" that the matter had been delegated by
7 General UMEZU. We need not take exception to his further
8 conclusion that SAKAI's superior must accept respon-
9 sibility, to the extent that SAKAI's actions were
10 ordered, authorized, approved or acquiesced in by the
11 superior. The question is, whether because the autonomy
12 movement followed the "Ho-UMEZU Agreement" it is valid
13 to draw the conclusion that it was the consequence of
14 it. TANAKA talked a good deal about its being the
15 "result," from which the prosecution draw their conclu-
16 sion that it was the "consequence"; the causation,
17 however, not being shown, but only assumed. TANAKA
18 himself concedes that the "Ho-UMEZU Agreement" was
19 action taken in implementation of the Boxer Protocol,
20 which -- growing out of a bloody outbreak of anti-
21 foreignism -- had granted to foreign powers the right
22 to station troops in North China to prevent such
23 activities.⁹⁵ In fact, as TANAKA's own evidence shows,
24

25 94. Tr. 2147-51.

95. Tr. 2145.

1 the "autonomy movement" found practical expression in
2 the "North China Autonomous Regime" in November and
3 thereafter; while General UMEZU had quitted North China
4 for a new post on or before 1 August.⁹⁶ The activities
5 of General DOHIHARA in North China need not, of course,
6 be discussed, since the evidence is that he had no
7 connection with General UMEZU's command, but was a
8 Kwantung Army officer, as the prosecution admit.⁹⁷
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96. Tr. 2147.

97. Ex. 129 (Tr. 803).

98. Summation, SE-5 (Tr. 39,197).

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1 General Ching Teh-chuns's supposition that
2 DOHIHARA was representing the Japanese Army organization
3 with headquarters in Tientsin--that is, General
4 UMEZU's command--is of course without foundation in
5 fact; he admitted that when he stated a matter to have
6 been "referred to the headquarters of the Japanese
7 garrison forces in Tientsin", he meant that it was
8 referred to whatever Japanese headquarters was represented
9 by General DOHIHARA⁹⁹. In the face of all the evidence
10 that General DOHIHARA was representing the Kwantung
11 Army, General Ching's theory that he was representing
12 both headquarters--a condition unknown to military
13 practice--can have no weight¹⁰⁰.

15 So far as any evidence discloses, after the
16 "Ho-UMEZU Agreement" there were no further incidents
17 of any nature, no "demands" or "ultimata" were served
18 upon the Chinese, and peace prevailed in North China¹⁰¹.
19 The prosecution mention the flights of Japanese military
20 aircraft in the Peiping-Tientsin area, for which
21 "violations of China's sovereignty" General UMEZU
22 "should be held responsible"¹⁰². The only evidence
23 of the origin of these planes is in the testimony of
24

25 99. T. 2,442.

100. T. 2,443.

101. Testimony of TANAKA (T. 2,146).

102. Summation SYY-13 (T. 42,034).

1 ISHIKAWA, to the effect that he first heard of the
2 matter in June, when the specific representation of
3 the Chinese was that "Kwantung Army airplanes" were
4 making such flights. At the Chinese request, the
5 witness reported the matter to General UMEZU, asking
6 him to have the flights stopped; General UMEZU took
7 action by request to the Kwantung Army, and the flights
8 were stopped¹⁰³. The evidence from the "Summary
9 of Japanese War Crimes" is to the effect that complaint
10 of the flights was again made on 3 August¹⁰⁴, which
11 however was after General UMEZU's departure from the
12 area.

13
14 If General UMEZU was the ardent plotter
15 for the separation of North China that the prosecution
16 would have us believe, it must be considered curious
17 indeed that after achieving the victory of June, after
18 thus successfully weakening the Chinese power to
19 resist, he did not press further demands, but instead
20 after several peaceful months was entirely removed
21 from the scene, retiring into obscurity as a mere
22 division commander in Sendai, in the North of Japan.

23 VICE-MINISTER OF WAR

24 General UMEZU was appointed Vice-Minister of

25 103. T. 2,788.

104. Exhibit 213 (T. 2,708).

1 War on 23 March 1936, occupying that office until
2 30 May 1938. The date of his appointment is not
3 without significance; it was just a month after the
4 notorious "2-26 Incident" which had not only threatened
5 the nation with chaos but had publicly demonstrated
6 the extent to which the discipline of the Army had
7 deteriorated and its sense of responsibility to the
8 country had been lost. This circumstance evidences
9 what was suggested earlier, the frequency with which
10 General UMEZU has been called upon to step into the
11 breach at times when ability to enforce discipline
12 and to exercise strict control have been the requisites.
13 Interesting testimony relating to this point was given
14 by Major-General YAMAMOTO, Moichiro, who served as his
15 secretary during the period of his vice-ministership;
16 while more detailed than that of other witnesses,
17 it only gives confirmation of what has been said
18 by all in connection with General UMEZU's views and
19 policies. According to General YAMAMOTO's testimony,
20 at the time of the 26 February Incident General UMEZU,
21 although not in Tokyo but in command of the Second
22 Division at Sendai, "had sent a telegram to the War
23 Minister urging him to suppress that instance of
24 insubordination and by all means to prevent such
25 instances of "direct action." It was, likely enough,

1 by reason of this forceful and voluntary expression
2 of his opinion, as well as of the "well-known fact
3 that he considered the regulation of the Army discipline
4 one of his important duties for the sake of reestablish-
5 ment of the Army", that he was chosen for designation
6 as Vice-Minister very shortly thereafter¹⁰⁵ .

7 The 26 February Incident basically was a
8 result of the increasing tendency of the Army to
9 concern itself with political affairs--to "meddle in
10 politics" and "be led astray by current opinions." It
11 would therefore be significant even in the absence of
12 evidence that General UMEZU was the man selected to
13 put the Army's house in order after it. The Vice-
14 Minister, of course, is a mere administrative officer;
15 owing to the fact that his superior, the Minister, is
16 by the nature of his post required to "meddle in
17 politics", it is just in matters of order and discipline--
18 administration--that there is the most opportunity
19 for the personality and views of the Vice-Minister
20 to express themselves. It is thus natural that his
21 precept and example should set the tone for the
22 attitude of the Army as a whole. Not only was the
23 gravity of conditions in February and March 1937
24 fully apparent, but it was obvious what must be done
25 105. T. 36,860.

to restore the Army to its proper condition; the
1 call therefore went to a man who "thought it necessary
2 for the sake of not only ensuring the Army not being
3 drawn into the politics but also for avoiding to
4 cause misunderstanding as if the Army were participating
5 in the politics"¹⁰⁶, a man who "was of an opinion
6 that the Army and soldiers should keep themselves aloof
7 above the politics, and that they should concentrate
8 their whole energies in performing their original
9 duties", who held the conviction that "participation
10 of Army and soldiers in politics, in his view, would
11 damage the silent dignity of the Army, and consequently
12 it would result in the fact that the Army would be
13 drawn into politics."¹⁰⁷ This continued insistence
14 on "keeping out of politics", in a Japanese Army
15 notorious for its meddling with domestic and international
16 affairs of state, is interesting. Nor is this a sporadic
17 instance; on the contrary, "keeping out of politics"
18 is the Leitmotiv which recurs again and again, at
19 every stage of General UMEZU's career. Even General
20 TANAKA, who cannot be considered favorably disposed
21 toward his fellow-military men, admitted this, in
22 terms of general application:
23

24 "He is a man who well understands politics,
25

106. Ibid.

107. T. 36,854.

but...dislikes very much to put his fingers into

politics. He is one of our senior officers who has
 1 constantly instructed us not to interfere in politics."¹⁰⁸

2 This characteristic had, as we have seen, been
 3 demonstrated practically in the time of his North
 4 China service¹⁰⁹, and was to be manifested in years
 5 to come when the General, as Commander-in-Chief of
 6 the Kwantung Army, was thrown into close contact with
 7 Japan's most delicate problem of international relations,
 8 as when as Chief of the Army General Staff he came
 9 to occupy what under his predecessors had been a
 10 position of great political activity and power.
 11

12 These views of General UMEZU found immediate
 13 expression both in the particular matter of his dealing
 14 with the 26 February Incident and of his attitude
 15 toward political entanglements of the Army generally.
 16 At the outset, "his counter-measures against the
 17 incident had been embodied fully in his regulation
 18 of Army discipline and other various steps which had
 19 been adopted afterward in order to settle the incident."¹¹⁰

20 As is known, these measures of his were effective;
 21 after 1936 there was not again an incident of non-
 22 discipline such as that which had been the national
 23

108. T. 2,152.

109. Testimony of ISHIKAWA (T. 20,785).

110. T. 36,860-61.

disgrace in that year. A very practical action of Vice-Minister UMEZU's is suggestive in connection with the absence of further incidents of this sort: he put the quietus on a plan, which he had heard was forming, to raise funds for the widows of the Army personnel who had suffered the death penalty for their participation in the 26 February Incident.¹¹¹

As to the general matter of disentangling the Army from political affairs, we have several expressions of his viewpoint at that time, well-authenticated by evidence. Not only have we the testimony of General YAMAMOTO, but two leading political figures of that time have come forward to state General UMEZU's intentions and actions as they knew them. General YAMAMOTO has testified to the following effect:

"...If the necessity that the Army should participate in the politics should arise, it would be considered as the misfortune of the country and moreover, he was of opinion that the time was not yet at hand even to consider the necessity of administering the Army power into political affairs. These thoughts are clearly comprehended from the instructions of the War Minister (TERAUCHI) and other various orders which
¹¹¹. T. 36,861.

1 were issued in the year of 1936, particularly in the
2 first half of the same year. It was also clearly
3 instructed by him that the Army officials who were
4 allowed to participate in politics should be limited
5 to the War Minister, the Vice-Minister, and some
6 officials of the Military Affairs Bureau (Gunmukyoku)
7 who had official responsibility of participating in
8 politics. This will be proved clearly if reference is
9 made to the replies of the War Minister and other
10 officials which had been delivered when the general
11 election (HAYASHI Cabinet) had been held in the spring
12 of 1937, the Vice-Minister, UMEZU, had requested that
13 the Army should take the neutral attitude strictly.
14 I and other officials in the Army who had been in the
15 posts in which the participation in politics had been
16 permitted, were repeatedly admonished by the Vice-
17 Minister in this particular regard. For instance,
18 it was warned by him that collecting political
19 information in the Parliament should not be carried
20 out any more than necessary for the sake of assisting
21 the War Minister. I remember that when the HAYASHI
22 Cabinet was being formed a severe admonition had
23 been given by him regarding the limit and extent to
24 which collection of information was to be carried out 112
25 112. T. 36,854-55.

The witness KANEMITSU Tsuneo, who was a
1 parliamentarian and for a period Vice-Speaker of
2 the House of Representatives during General UMEZU's
3 Vice-Ministership of War. testified to having had
4 frequent contact with Vice-Minister UMEZU and to being
5 well acquainted with his character and political
6 opinion. General UMEZU's appointment as Vice-Minister,
7 he says, had been welcomed in the political world
8 and among the leading men as promise that the activities
9 of the Army would be controlled and the Army restored
10 to its proper condition¹¹³. Vice-Minister UMEZU told
11 him, after his appointment, that he would effectively
12 control the Army by extinguishing factionalism and
13 by suppressing and preventing "young officers' move-
14 ments"; as a result of carrying out which program
15 the Vice-Minister had been subjected to a malicious
16 rumor campaign, but he intended to persevere despite
17 that¹¹⁴. As the aftermath of the 26 February Incident,
18 there was still a widespread belief that the Army
19 disapproved of political parties and desired their
20 abolition, and rightist-manufactured charges to that
21 effect were appearing. Vice-Minister UMEZU stated
22 categorically to the witness that no such idea was
23

24 113. T. 36,959.

25 114. T. 36,960.

entertained by the high officials of the Army; and
1 as far as his own ideas were concerned, they were
2 that military officers should not meddle in political
3 matters, that the Diet should be respected and that
4 existence of political parties was a necessity for
5 parliamentary government¹¹⁵. Not only did he state
6 his opinions in that way, but he was always cooperative
7 toward the political parties and never by word or deed
8 suggested that the Army should take a part in questions
9 of politics¹¹⁶.

10 The other parliamentarian who testified on
11 behalf of General UMEZU, AYABE, Kentaro, also was
12 for long a member of the Diet and in his capacity
13 as such had occasion for association with General
14 UMEZU as Vice-Minister of War¹¹⁷. This witness likewise
15 knew of General UMEZU's opposition to the participation
16 of Army officers in politics, that he deplored their
17 tendency to activities in that direction, and that
18 he was doing his best to reform the Army in that
19 particular¹¹⁸. General UMEZU's viewpoint of the
20 nationalistic societies and similar elements was
21 clarified by his statement to the witness that the
22 political activities which had grown up in the Army
23

24 115. T. 36,960.
25 116. T. 36,961.
117. T. 36,843-45.
118. T. 36,843-44.

1 owed much to the instigation of the rightist groups
2 and parties, and that he was therefore taking steps
3 to prevent the rightists from approaching Army
4 officers. The result was again the spreading of
5 infamous rumors, discreditable to the Vice-Minister,
6 among the rightists¹¹⁹. This witness being aware of
7 the widely-held belief that the Army disapproved and
8 advocated the suppression of political parties, he
9 likewise had a talk on that subject with the General.
10 He was told that in General UMEZU's opinion the foremost
11 duty of the nation was to abide by the constitution;
12 that the Diet could not be disregarded, and that the
13 existence of a parliament required political parties,
14 which were necessary to sound statesmanship. The
15 same question being publicly raised in interpellation
16 in the 1937 Diet, General UMEZU in answering denied
17 that he had ever had such a thought as that of disapproval
18 of political parties.¹²⁰

19 None of these three witnesses was called
20 for cross-examination by the prosecution; this is
21 entirely comprehensible, inasmuch as there is not and
22 has never been in the record, or elsewhere, a suggestion
23 that General UMEZU's character and actions have not

24 119. T. 36,844.

25 120. T. 36,844-45.

been exactly as delineated by them.

1 "It seems never to have occurred to any of
2 these accused", say the prosecution, "that they had
3 the first obligation and duty to set their own house
4 in order, to the extent of providing ample security
5 from assassination of their own national leaders,
6 before they proceeded on with this vast scheme to
7 confer the benefits of Japanese civilization throughout
8 such a great part of the world."¹²¹ It occurred to
9 General UMEZU. He is not shown or suggested ever to
10 have been involved in any scheme to propagate Japanese
11 civilization; but he assuredly did as Vice-Minister
12 of War of Japan in 1936-38 do what one man could do to
13 suppress those tendencies which had resulted in
14 assassinations and terrorism.
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121. Summation §19 (T. 38,962).

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121. Summation §19 (T. 38,962).

1 This being General UMEZU's approach to the
2 responsibilities imposed upon him as Vice Minister,
3 it remains to be seen whether and in what manner he
4 participated in that capacity in any matters of business
5 of interest to this Tribunal. It will be noted, as we
6 pursue the refutation of the prosecution's summation
7 against him, that, as usual, there is no evidence to
8 support any of the fantastic, wide-ranging charges
9 which they here press against him; the summation, in
10 fact, by its barrenness of reference to evidence and
11 its imtemperate and dogmatic tone, refutes itself
12 upon mere cursory reading. The first of the prosecu-
13 tion's points is stated thus:

14 "During his tenure of office as Vice War
15 Minister in 1936-38, UMEZU, as well as the staff of
16 his subordinates in the War Ministry, took part in
17 the working out of drafts and in subsequent implement-
18 ation of the most important decisions of the Japanese
19 Government aimed at the extension of aggression."¹²²

20 This raises two questions: One, that of the
21 responsibility and authority of a vice minister. There
22 is an abundance of evidence on this point. We might
23 notice the Imperial Ordinance Concerning the Organization
24 of the Ministries, which states in its Article 16 as the
25

entirety of the vice minister's functions that "the
1 Vice Minister shall assist the Minister, coordinate
2 the affairs of the Ministry, and supervise the affairs
3 of Bureaus and Divisions."¹²³ The War Ministry regula-
4 tions show the duties of the Vice-Minister of War as
5 being to "assist the Minister, manage ministerial
6 affairs and supervise the Minister's secretariat and
7 each respective Bureau."¹²⁴ The testimony of numerous
8 witnesses who had served as vice minister or bureau
9 director of one of the several ministries, made it
10 clear that there was no question of the vice minister's
11 being in the chain of command; he is not the superior
12 except in an administrative way of bureau directors,
13 who are responsible in their functions directly to the
14 minister; he is not competent to act in place of the
15 minister in the latter's absence; his sole function is
16 that of coordinating the work of the ministry and pro-
17 moting its efficient functioning. While there can be
18 no doubt on this subject, it might be well to quote the
19 words of a few of these witnesses. Admiral SAWAMOTO,
20 a one-time Vice Minister of the Navy, testified that the
21 duties of the vice minister were the following:
22

23
24 123. Exhibit 73, Tr. 17,486.

25 124. Exhibit 3,348, Tr. 31,659.

1 "(1) According to the Government organiza-
2 tion, the Vice Minister is to assist the Minister in
3 the latter's capacity as the chief administrative
4 official and there is no stipulation by virtue of
5 which the former ought to help the Minister in his
6 character of Minister of State.

7 "(2) Before the Vice-Minister could act as
8 proxy for the Minister, the Cabinet must grant permis-
9 sion by special proceedings, the Minister not having
10 the authority to give such order otherwise.

11 "(3) From the viewpoint of the government
12 organization, only the Minister, and not the Vice
13 Minister, has a right of direction and command,
14 authority over personnel matters, and power to punish
15 over each of the Bureaus and Divisions. The Vice-
16 Minister can do no more than to lend a helping hand
17 by expressing his opinion on these matters to the
18 Minister, with the exception, however, of persons who,
19 in conformity with the regulations, are in the service
20 by order of the Vice Minister; for example, Navy
21 Archives Officials.

22 "(4) From the viewpoint of the government
23 organization, chiefs of each of the bureaus and divis-
24 ions are directly responsible to the Minister for
25 the business in his department and directs and super-

vises in that office the respective business of each
1 of the divisions and sections.

2 "(5) According to the regulations common to
3 the official organization of each ministry, it is pro-
4 vided that the Vice Minister helps the Minister,
5 adjusts departmental affairs and supervises the
6 business of each bureau and division."¹²⁵

7 A former Bureau Director of the War Ministry,
8 General MIKI, testified as follows:

9 "2. Chiefs of bureaus were not directly
10 subordinate to the Vice Minister. However, the latter
11 supervised the business of the bureaus.
12

13 "3. Chiefs of bureaus were directly subordin-
14 ate to the Minister of War. They conducted the business
15 under their respective charge by order of the Minister
16 to whom they were each responsible."

17 "5. I observed that the primary duties of the
18 Vice Minister were to strive for harmony and smooth
19 operation of business within the ministry and to assist
20 the Minister as his aide."

21 "8. The orders of the War Minister were
22 generally stipulated as departmental ordinances,
23 notifications, instructions, etc., and only when orders
24 were issued was the Minister's name used. On other
25

occasions the Minister's name was not used and instead,
1 in accordance with business custom, the Vice-Minister's
2 notification by order was issued.

3 "The Vice Ministerial notification by order
4 was the method employed when orders approved by the
5 Minister were transmitted in writing.

6 "9. The power to command, appoint and dismiss,
7 and punish chiefs of bureaus was held by the Minister.
8 The Vice Minister had no such power. Except on the
9 less important of the matters delegated to him, the
10 Vice Minister had no power of decision and, of course,
11 no power of command outside the ministry. Consequently,
12 although it was his responsibility to assist the
13 Minister, he was not in a position of responsibility
14 with regard to external matters."¹²⁶

15
16 Another former Vice-Minister, General SHIBAYAMA,
17 gave the same explanation:

18 "a. The Vice-Minister acts as an assistant
19 to the Minister. Toward other departments and author-
20 ities he has no authority to represent the Ministry,
21 nor does he possess the right of command, accordingly
22 he is not in a position to take any responsibility for
23 matters outside the ministry.

24 "b. The Vice Minister acts as an assistant to
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22 he is not in a position to take any responsibility for
23 matters outside the ministry.

24 "b. The Vice Minister acts as an assistant to
25
126. Tr. 31,716-18

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1 in accordance with business custom, the Vice-Minister's
2 notification by order was issued.

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4 was the method employed when orders approved by the
5 Minister were transmitted in writing.

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11 no power of command outside the ministry. Consequently,
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13 Minister, he was not in a position of responsibility
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20 ities he has no authority to represent the Ministry,
21 nor does he possess the right of command, accordingly
22 he is not in a position to take any responsibility for
23 matters outside the ministry.

24 "b. The Vice Minister acts as an assistant to
25

the Minister concerning military administrative affairs,
but not concerning state affairs.

"c. The rights to command, to appoint or dismiss, and to punish the Chiefs of Bureaus and Departments belongs only to the Minister, and not to the Vice-Minister. The Vice-Minister has only the right to supervise business management. This, however, does not imply such strong authority as the right to direct and command such management. It merely implies the right to offer guidance and instruct with regard to business.

"The Chiefs of the Bureaus and Departments have the right to command, to control and punish their staffs, and to keep examination records concerning them."¹²⁷

Finally, the prosecution's own witness, General TANAKA, testified that:

"In the War Ministry the vice minister -- in the regulations governing the War Ministry, the vice minister had no command functions over the various bureau heads. His authority was merely in a supervisory capacity. Consequently, the various bureau heads frequently got into direct contact with the minister and decisions were sometimes made accordingly."¹²⁸

127. Tr. 31,802-04.
128. Tr. 14,397-98.

1 It is therefore beyond dispute that whatever
2 plans were drafted in the War Ministry during General
3 UMEZU's time as Vice Minister, they were not drafted
4 by "the staff of his subordinates," because the Vice
5 Minister has no subordinates in the sense of officials
6 whom he is entitled to command or control. His job is
7 business management, administration.

8 As to the second question, that of General
9 UMEZU's "taking part in the working out of drafts and
10 implementation of decisions," it is equally clear.
11 It is clear that the Vice-Minister of any ministry is
12 not the Minister; it is clear that what may have been
13 decided at conferences "of Five Ministers (including
14 the War Minister)" or "of Four Ministers (which also
15 included the War Minister)", were not decisions of the
16 Vice-Minister and have nothing whatever to do with
17 proof of his opinions or actions. We can therefore
18 ignore the prosecution's discussions of drafts of
19 proposed national policies decided among these
20 ministers' conferences or proposals worked out by the
21 War and Navy Ministries during his term of office.¹²⁹

22 "As Vice War Minister," we are told by the
23 prosecution, "UMEZU took an active part in the conclu-
24

25 129. Exhibits 216, Tr. 2,727; 704, Tr. 7,523;
977, Tr. 9,542; 978, Tr. 9,548; Summation
§ YY-14 -- YY-17, Tr. 42,035, 42,036.

1 sion of the Anti-Comintern Pact and took steps to
 2 include Manchukuo therein . . ."¹³⁰ The sum total of
 3 the evidence on the active part of this defendant in
 4 the conclusion of the Anti-Comintern Pact is a telegram
 5 from the Vice-Minister of War to the Chief of Staff of
 6 the Kwantung Army, dated 15 May 1938, the entire text
 7 of which as it appears in evidence is as follows:

8 "Referring to Manchukuo's entry in the
 9 Anti-Comintern Pact between Japan, Germany and
 10 Italy, we inform you that as far as our country is
 11 concerned there would be no objection as clearly
 12 stated in the said pact. We are of the opinion that
 13 it is best to take on the formality of 'Manchukuo
 14 requesting entry into the pact on her own will and
 15 having Japan assist her in that respect,' by seizing
 16 a favorable opportunity soon."^{130-A}

17 While this has no tendency to prove anything,
 18 this telegram, it is interesting to note, is apparently
 19 in answer to a telegram from the Chief of Staff of the
 20 Kwantung Army to the Vice-Chief of the General Staff in
 21 Tokyo, requiring that he "please send me your opinion
 22 at your earliest opportunity."¹³¹ This is therefore an

23 130. Summation, § YY-18, Tr. 42,036.

24 130-A. Exhibit 242, Tr. 2,997.

25 131. Ibid.

and be immediately corrected in Manchukuo. (Including
1 everything except the announcement by the Japanese
2 Foreign Ministry relating to the regular air-line
3 connections between Europe and Asia.)" 132-A

4 That this telegram was addressed to the Vice
5 Minister, just as all routine communications were
6 addressed to the Vice Minister; that it was addressed
7 to him, with no proof that he received it, read it or
8 acted upon it; that in January 1938 the Chief of Staff
9 of the Kwantung Army was interested in air connections
10 between Japan and Germany; this is the rubbish which
11 the prosecution offer as proof of the "active part"
12 taken by a defendant in the conclusion of the pact
13 already signed a year and a half earlier.
14

15 The prosecution come next to the problem of
16 the UGAKI Cabinet. General UGAKI had been designated
17 Premier in 1937, but for certain reasons he encountered
18 difficulties in formation of a cabinet and finally
19 abandoned the attempt. The prosecution explain this
20 failure in the following language: "... the reaction-
21 ary circles of the Japanese Military considered his
22 nomination undesirable . . . and they frustrated the
23 formation of his cabinet . . ." 133 In support of this
24 argument, and in their further discussion that General
25

132-A. Exhibit 770, Tr. 7,871.

133. Summation, 8YY-19, Tr. 42,037.

example of that function of the Vice-Minister of War
1 as a channel of communication which has been testified
2 to by several witnesses, as, for example, we have seen
3 above from the quotations of the witnesses SAWAMOTO
4 and MIKI. The Anti-Comintern Pact was concluded in
5 November 1936; the "active part" which the prosecution
6 say General UMEZU took in its conclusion occurred in
7 May 1938, when he stated that so far as the Army was
8 concerned there was no objection to the carrying out
9 of Article 2 of the Pact,¹³² providing for the invita-
10 tion of nations other than the original signatories to
11 adhere to it. The remaining prosecution evidence on
12 General UMEZU in connection with the conclusion of the
13 Anti-Comintern Pact is a telegram addressed to him by
14 the Chief of Staff of the Kwantung Army on 17 January
15 1938, the entire text of which is as follows:
16

17 "Regarding air-line connections between Japan
18 and Germany, general prohibition cannot be fully
19 expected, because the publication of newspaper accounts
20 is prohibited only as regards the negotiation itself
21 in spite of agreement that the absolute secret should
22 be strictly kept from other countries. Therefore, I
23 hope that this matter will be corrected as follows,
24

25 132. Exhibit 26, Tr. 499.

1 UMEZU had something to do with the matter, they cite
 2 two exhibits; one a talk by Vice-Minister UMEZU, the
 3 other, a notice from him to the Ex-Soldiers Organiza-
 4 tion (certain other exhibits, including a "declaration
 5 issued by the Seiyukai Party Mass Meeting"¹³⁴ and two
 6 documents of the Home Ministry Police Bureau "regarding
 7 movements of the rightist bodies"¹³⁵ are not referred
 8 to in the summation.) Before I analyze these documents
 9 a few general considerations might be mentioned.
 10 Blocking the formation of a cabinet, of course, could
 11 not be a crime cognizable by this Tribunal unless it
 12 were shown to be a step in the preparation of aggressive
 13 war. It is obviously for this reason that the prosecu-
 14 tion favor us with their opinion that "the only reason"
 15 for such action "could be that at that moment UGAKI's
 16 nomination was considered inadequate from the standpoint
 17 of the prosecution of the aggressive policy of the
 18 Japanese imperialism, one of whose agents was UMEZU,
 19 a party to the conspiracy."¹³⁶ Naturally, there is no
 20 proof cited, or existent, to sustain this Olympian
 21 judgment; and it will suffice to say that there might
 22 have been, and in fact were, many reasons for the

23 134. Exhibit 2,208-A, Tr. 15,790.

24 135. Exhibits 2,208-B, Tr. 15,794; and 2,208-C,
 25 Tr. 15,796.

136. Summation, § VY-19, Tr. 42,037.

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 25 Tr. 15,796.

136. Summation, § VY-19, Tr. 42,037.

1 opposition to General UGAKI as Premier, reasons which
 2 still in 1941 were considered to furnish adequate grounds
 3 for his not serving as Premier.¹³⁷ If we are to apply
 4 the principles of proof and the presumption of innocence
 5 in the absence of evidence of guilt, we must assume that
 6 General UMEZU's opposition to an UGAKI cabinet, if he
 7 was opposed, was motivated by his well-known desire to
 8 prevent recrudescence of the spirit of lawlessness
 9 which had broken out in February 1936, and was more
 10 than a possibility in the event of General UGAKI's
 11 becoming premier.¹³⁸ It is amusing, by the way, to
 12 find the prosecution at another place condemning the
 13 Navy for not having employed, at times when it may
 14 have had objection on grounds of conscience to current
 15 policies, the power to obstruct or destroy cabinets as
 16 a means of restraining these policies.¹³⁹

17 There is, however, no evidence that General
 18 UMEZU "considered General UGAKI's nomination undesirable."
 19 The presumption would be that here, as elsewhere, the
 20 Vice Minister of War did not make policy, but made only
 21 statements of the policy laid down by the Minister.
 22 This is exactly what is shown to have been the case.
 23 The notice to the Ex-Soldiers' Organization states that

24 137. Tr. 31,009-22.

25 138. Exhibits 2,208-B, Tr. 15,794; 2,208-C, Tr.
 15,796; 2,208-D, Tr. 15,798; and 2208-E,
 Tr. 15,800.

139. Tr. 16,797-98.

"the Army established" a certain view, pursuant to
1 which the War Minister took a certain position toward
2 the UGAKI Cabinet question.¹⁴⁰ Similarly the so-called
3 talk by General UMEZU states that the Army, firmly
4 believing certain things, will take such-and-such
5 a stand.¹⁴¹ Finally, in these two documents the
6 Vice-Minister of War stated that the Army, feeling
7 "that they are making progress to the maintenance
8 of military discipline," feared that it would be
9 impossible to control the Army in the event of the
10 assumption of the premiership by General UGAKI, in
11 view of the general belief of his involvement in certain
12 incidents of the past which had been the forerunners of
13 the shocking 26 February Incident; "the objection is a
14 result of full consideration by the whole Army united
15 for the sake of completion of maintenance of discipline
16 and the control of cliques." The record is barren of
17 proof that the Army's view of the consequences of General
18 UGAKI's becoming premier was or was not correct; it is
19 certainly utterly barren of evidence to confirm the pro-
20 secution's "reason" for Army opposition. If the prosec-
21 ution were by chance correct, it would remain to show
22 otherwise than by merely surmising it that General UMEZU
23

24 140. Exhibit 2,208-E, Tr. 15,800.

25 141. Exhibit 2,208-D, Tr. 15,798.

supported or approved any such policy as they suggested.

THE PRESIDENT: We will adjourn until half
past one.

(Whereupon, at 1200, a recess was taken.)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Major Blakeney.

4 M.R. BLAKENEY: Page 50, Section 21:

5 Finally, "it is characteristic that as a
6 representative of the most reactionary factions of
7 Japan's military ULEZU invariably remained Vice-War
8 Minister in the Cabinets of HIROTA, HAYASHI and
9 KONOYE."¹⁴² There is ample evidence in the record
10 that vice-ministers, not being political function-
11 aries, do not change with the coming and going of
12 cabinets; there is no evidence to the contrary, nor
13 of course to General ULEZU's "reactionary" nature.
14 One or two examples of the evidence of the non-
15 political character of the vice-minister's office
16 will be given. The one-time Navy Vice-Minister
17 SAWAMOTO testified that "When there is a cabinet
18 change, no member of the Navy Ministry is affected
19 except the Navy Minister. I do not remember of any
20 occasion in which the Vice-Minister of the Navy was
21 changed as a result of a political change."¹⁴³ Former
22 Vice-Minister of War SHIBAYAMA confirmed that the
23 same practice obtains in the War Ministry; "Changes
24

25 142. Summation, §YY-19 (Tr. 42,037)

143. Tr. 31,674

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21 changed as a result of a political change."¹⁴³ Former
22 Vice-minister of War SHIBAYAMA confirmed that the
23 same practice obtains in the War Ministry; "Changes
24

25 142. Summation, §YY-19 (Tr. 42,037)

143. Tr. 31,674

1 of cabinets have no connection whatever with the
 2 appointment of the Vice-Minister of War, which be-
 3 longs in the jurisdiction of the War Ministry." ¹⁴⁴

4 General ULEZU is alleged by the prosecution
 5 to have "played an active role in the working out
 6 and in the execution" of something called "Japan's
 7 large-scale preparations for expansionist warfare."
 8 The proofs of this are his "personal participation
 9 in the activities of" the National Resources Inves-
 10 tigation Council, the Steel Industries Investigation
 11 Commission, the Automobile Manufacturing Business
 12 Commission and the Liquid Fuels Commission, which
 13 personal participation "helped to put the main
 14 Japanese industries on a war-footing and ensured
 15 military and economic preparations for wars of
 16 aggression." ¹⁴⁵ This list is very incomplete. There
 17 should have been mentioned also General ULEZU's
 18 membership in the Central Statistics Commission, the
 19 North-Eastern Districts Development Investigation
 20 Council, the Council for the Peers' School, the
 21 Home Products Encouragement Commission, the Weight
 22 and Measure System Investigation Commission, the
 23 Temporary Romaji Investigation Committee, the 2600th

24 144. Tr. 31,806

25 145. Summation, SSYY-20 (Tr. 42,038)

1 Year Anniversary Celebrations Preparation Commission,
2 the State Property Investigation Commission, the
3 Preparatory Committee for the Construction of the
4 Central Government Buildings, the Investigation
5 Committee for Horse Administration, the Council for
6 Educational Reform, the Engineer's Conference, the
7 Committee for the Celebration of the 2600th Anni-
8 versary of the Founding of the Empire, the Infor-
9 mation Committee, the Information Bureau, the
10 Cabinet Investigation Bureau, the Committee for the
11 Establishment of the Formosan Colonization Company,
12 Ltd., the Shipping Control Committee, the Central
13 Air Defense Committee, the Planning Board, the
14 Education Research Society, the Commission for the
15 Protection of Sick and Wounded Soldiers, the Central
16 City Planning Committee, the Central Price Control
17 Commission, the Planning and Research Committee, the
18 Science Research Committee, the Establishing Commit-
19 tee for the North China Development Company and the
20 Central China Development Company, Ltd., the Estim-
21 ating Committee Regarding Government Investments in
22 the North China Development Company and the Central
23 China Development Company, Ltd., and the Electric
24 Power Research Society. 146 I am not being facetious;
25 this list of the councils, committees, commissions

and advisorships to which the Vice-Minister of War
 1 is ex-officio designated is important as emphasizing
 2 the extent of the "personal participation" which
 3 the man charged with the administration of the entire
 4 War Ministry can be expected to have in the work of
 5 these organizations. Of course there is not a
 6 scintilla of evidence of any personal participation
 7 of General ULEZU in the activities of any of these
 8 organizations; there is on the contrary evidence of
 9 the ex-officio nature of the appointments and the
 10 mere nominal character of the membership.¹⁴⁷ Nor is
 11 there a scintilla of evidence to sustain the bare
 12 allegation that "as chairman of the Army Munitions
 13 Investigation Council and Chief of the Army Arsenal
 14 (the personnel record shows this to be "acting chief,"
 15 from 22 April to 1 August, 1936,) ULEZU concentrated
 16 in his own hands the regulation of all army supplies
 17 and, primarily, armaments and ammunition supply."¹⁴⁸

19 The prosecution have discovered that General
 20 ULEZU "is responsible for the prosecution of the
 21 undeclared aggressive war against China during the
 22 years 1937-38."¹⁴⁹ The evidence is as follows:

- 24 147. Testimony of SAWAMOTO (Tr. 31,675) and
 25 SHIBAYAMA (Tr. 31,806)
 148. Summation, SY-20 (Tr. 42,038)
 149. Summation, SY-22 (Tr. 42,039)

The Chief of Staff of the Kwantung Army in June
 1 1937 addressed a telegram to the Vice-Minister,
 2 in the same way that all incoming telegrams were
 3 addressed to the Vice-Minister, giving his opinion
 4 of what steps should be taken.¹⁵⁰ "The actions taken
 5 by UMEZU pursuant to this program can be easily
 6 determined from facts"¹⁵¹ -- not, of course, from
 7 evidence, of which there is none. These facts, how-
 8 ever -- which are "well known" -- are that "less
 9 than a month after this telegram, the Japanese
 10 troops struck a blow against the Nanking Government."¹⁵²
 11 Moreover, the Vice-Minister of War "was directly
 12 concerned with the mobilization and dispatch of
 13 Japanese troops to China."¹⁵³ The evidence cited to
 14 sustain this conclusion is the testimony of three
 15 witnesses to the general situation of the time of
 16 the outbreak of the China Affair; one of these was
 17 Vice-Minister of Foreign Affairs, one was a section
 18 chief in the Army General Staff, the third was a
 19 section chief in the War Ministry. The witness
 20 TANAKA states that in common with other War Ministry
 21 officials the Vice-Minister "maintained a passive atti-
 22 tude in regard to further mobilization."¹⁵⁴ No one
 23

24 150. Ex. 672 (Tr. 7336) 153. Summ. SYY-22
 25 151. Summ. SYY-21 (Tr. 42,038) (Tr. 42,039)
 152. Ibid 154. Tr. 20,685

of these witnesses undertakes to say that the Vice-
 1 Minister of War was responsible for or "directly
 2 concerned with" the dispatch of troops to China.
 3 Another of these witnesses, General KAWABE, testi-
 4 fied also that "the leaders of the War Ministry,
 5 especially Lt. General ULEZU Yoshihiro the Vice-
 6 Minister of War, maintained the non-enlargement
 7 principle so firmly" that "they would not consent
 8 to General Staff proposals for additional mobiliza-
 9 tion."¹⁵⁵ The remaining evidence relied upon by the
 10 prosecution to prove responsibility for the China
 11 Affair, that the Vice-Minister of War made an in-
 12 spection tour of the battle-areas in China in
 13 January 1938, of course proves nothing. This
 14 incident, however, leads me to mention of an egregious
 15 example of the type of evidence relied upon by the
 16 prosecution to convict this defendant. I refer to
 17 the document entitled "The Course Towards the Open-
 18 ing of the Imperial Conference,"¹⁵⁶ put in evidence by
 19 the prosecution in rebuttal. This document bears
 20 the note "East Asia Bureau, Section 1. MATSUDAIRA."
 21 It contains a page of more or less trivial gossip,
 22 ending with the statement that "as to the outline
 23
 24

155. Tr. 21,999

25 156. Exhibit 3629 (Tr. 37,245)

decided by the Imperial Conference, I understand
that Vice-minister UMEZU carried it with him to
China." We do not, of course, know who the author
of the document was; he was apparently one MATSUDAIRA
in the 1st Section of an East Asiatic Bureau, pre-
sumably of the Foreign Ministry (the prosecutor's
statement in answer to the objection to this docu-
ment was that the author is "MATSUDAIRA, the head of
the 1st Section of the East Asia Bureau of the
Foreign Office," which is not only unsupported by
the document but is not in fact true). In any
event, the author, whoever he was, after stating the
foregoing gossip to have been "a private talk by one
of the staff officers of the Army General Staff,
which I heard indirectly through a high-ranking
official," declares that he is "doubtful as to its
reliability." At that stage of the proceedings the
President of the Tribunal pointed out that "these
men are before us on capital charges";¹⁵⁷ but the
prosecutor pressed -- successfully -- for its admis-
sion "as some evidence, subject to the comment that
it is hearsay, of the truth of the statements as
affecting the accused . . . UMEZU."¹⁵⁸ The real point

157. Tr. 37,244

158. Ibid.

of the entire incident is that this information,
 1 if true, does not in any way affect the accused
 2 U.EZU; no reason has ever been suggested that he
 3 should not have "carried with him to China" the
 4 decision of the Imperial Conference. The instance
 5 is illuminating as the ultimate in the irresponsibility
 6 of this prosecution.

7 "On 11 October 1937, U.EZU and the staff of
 8 his subordinates in the War Ministry prepared 'Views
 9 Concerning the Attitude of the Empire toward Arbitration
 10 or Intervention by America, European Powers
 11 or the League of Nations in the Sino-Japanese Incident.'
 12 159 These "views" do not mention the Vice-
 13 Minister of War, show no connection with the Vice-
 14 Minister of War, and in fact show upon their face
 15 that they are a plan or decision at the ministerial
 16 level. 160 The document does not "show with what per-
 17 severance U.EZU strove to effectuate aggressive
 18 plans"; 161 it shows nothing, one way or the other,
 19 about General U.EZU. It cannot be that the prosecution
 20 do not understand that the vice-minister of a
 21 ministry is not a policy-maker, is not responsible
 22 for the actions and decisions of the Minister, and

- 23 159. Summation, §YY-23 (Tr. 42,040)
 24 160. Exhibit 3268 (Tr. 37,237)
 25 161. Summation, §YY-23 (Tr. 42,040-41)

1 in instances of utmost secrecy may not even know of
 2 them; they understand this, I say, well enough, but
 3 they are desperate for any evidence tending to
 4 incriminate this defendant.

5 General UMEZU, we are told, "studied and
 6 took action on the basis of 'The Outline of the Policy
 7 for the Establishment of a New China,' submitted to
 8 the War Ministry by the Commander-in-Chief of the
 9 Kwantung Army on 24 January, 1938." ¹⁶² There is no
 10 evidence that General UMEZU studied the document; we
 11 know that the Vice-Minister does not take action.

12 The final proof of General UMEZU's respon-
 13 sibility for the China Incident is that on him was
 14 bestowed an award for meritorious services in con-
 15 nection therewith. ¹⁶³ As the Tribunal is aware from
 16 the evidence, he was not singled out as sole recip-
 17 ient of recognition for these meritorious services;
 18 rewards for the China Incident were given to
 19 3,319,547 other individuals. Recipients of the same
 20 order as that received by General UMEZU totalled at
 21 least 186,362. ¹⁶⁴ As has been proved to the Tribunal,
 22 these awards were invariably given on the basis, not
 23 of actual services rendered but in accordance with
 24

25 162. Id., SY-25 (Tr. 42,041)

163. Summation, SY-24 (Tr. 42,041)

164. Testimony of MURATA (Tr. 28,032)

1 "the standing rules regarding rewards" and "on the
2 basis of the official positions occupied by the
3 recipients at that time."¹⁶⁵

4 "U.EZU's role and participation in military
5 preparations for Japan's aggressive war against the
6 Soviet Union considerably increased while he held
7 the post of Vice War Minister . . ." ¹⁶⁶ If at that
8 time he had any role in preparations against the
9 Soviet Union, certainly it was an increased one,
10 there being no proof of any such role theretofore.

11 ". . . it is further corroborated by documents from
12 the War Ministry Diary which incontestably establish
13 the fact that U.EZU did everything in his power to
14 the increase of Kwantung Army forces and to the
15 construction of various military objectives in Man-
16 churia, preparing her as a military base for the
17 invasion by her troops."¹⁶⁷ It is not clear why offi-
18 cers of the Japanese Army should not work for the
19 increase of their forces, but as usual, the exhibit
20 cited by the prosecution proves nothing of what the
21 prosecution allege it to. This document is a col-
22 lection of telegrams between the Chief of Staff of
23

24 165. Testimony of MURATA (Tr. 28,023); NARITA,
25 Katsushiro (Tr. 35,399); and MATSUMOTO Shun-
ichi (Tr. 35,464)

166. Summation, SYY-26 (Tr. 42,042)

167. Summation, SYY-26 (Tr. 42,042)

1 the Kwantung Army and Vice-Minister of War, the
2 channel through whom went all communications to and
3 from the War Ministry, concerning the construction
4 of personnel to the Kwantung Army, the forwarding
5 of topographical materials, the extension of terms
6 of service of enlisted men, and the like. The
7 "secret documents, two of which were signed person-
8 ally by ULEZU," disclosing that "in 1938 he took
9 drastic measures to increase the strength of the
10 Kwantung Army"¹⁶⁸ prove to be telegrams from the Vice-
11 minister of War stating that it has been decided
12 that the service of the conscripts in Manchuria
13 will be "extended for the time being." The secrecy
14 is that normal to military establishments of any
15 nation; the signing personally by ULEZU (his name
16 was probably signed by a clerk) illustrates his
17 function as a channel of communication; the increase
18 of the strength of the Kwantung Army, which is not
19 shown to have been desired, as certainly it could
20 not be ordered, by him, was a normal part of the
21 defensive preparations adopted during those years
22 in view of the menace of the tremendous Soviet forces
23 being built up in the Far East.¹⁶⁹ The evidence and
24
25 168. Summation, §YY-27 (Tr. 42,042).
169. Summation for the defense, Section "H," "The
Soviet Case," §36 (Tr. at 42,823-26),

the summation are full of additional instances of
1 the Chief of Staff of the Kwantung Army communicat-
2 ing with the War Ministry, but those matters are of
3 no concern to us in the absence of any showing of
4 personal connection of this defendant with them or
5 of their illegality. Nor need we discuss -- even
6 though they are submitted to the War Minister --
7 the secret plans the Kwantung Army had for the
8 special strengthening of aeronautical and meteorolo-
9 gical services under their jurisdiction. 170

11 Lastly, among the activities of General
12 ULEZU as Vice Minister of War, a word about his
13 connection with the funds of the War Ministry. As
14 the prosecution correctly state, he was responsible
15 for the disbursement of the secret fund of the
16 Ministry. This matter was testified to extensively
17 by General YAMAMOTO, who had had personal knowledge
18 of it as a result of having served Vice-Minister
19 ULEZU as his secretary for a year from the date of
20 General ULEZU's appointment. This testimony leaves
21 it in no doubt that General ULEZU made it his policy
22 to curtail the expenditures from the secret fund, and
23 especially to avoid using it for purposes likely to
24 lead to the Army's being drawn into participation in
25 170. Summation, SSYY-29, YY-30 (Tr. 42,043)

1 politics; he required full explanation of requests
2 for donation to individuals or groups outside the
3 Army itself, and unless he was fully convinced of
4 the merits of the application he refused authoriza-
5 tion for the donation. ¹⁷¹ Whereas his predecessors
6 as vice-minister had exercised very loose control
7 over the disbursement of the special fund, permit-
8 ting their secretaries on most occasions to make
9 the decisions, and had permitted payments of con-
10 siderable sums to politicians and right-wing groups,
11 his policy was a very strict one, particularly
12 vis-a-vis the political and right-wing organizations.
13 The result of this action of his was that payments
14 to groups of some types were discontinued immediate-
15 ly, others were discontinued gradually, and the re-
16 mainder were curtailed to one-half or one-third of
17 what they had formerly been allowed. ¹⁷² His principle
18 in carrying out this policy was to eliminate not
19 only uses of the fund which were unnecessary for the
20 proper purposes of the Army, but even to eliminate
21 payments which, though justified and useful to the
22 Army, might result in drawing it into politics or in
23 giving outsiders the impression that such was being
24

25 171. Tr. 36,856-7

172. Tr. 36,857-8

1 done. General UMEZU did not decrease payments from
2 this fund for scientific purposes and the like.¹⁷³
3 It is submitted that this evidence -- which is the
4 only evidence in the record on the subject -- does
5 not support the prosecution's statement that "he
6 contributed money out of this fund to right-wing
7 politicians for the purposes of bribery in the inter-
8 est of the conspirators."¹⁷⁴ As to the further con-
9 tention that "on 8 March 1938, UMEZU personally re-
10 ceived 150,830 yen from the Secret Funds of the
11 Manchurian Incident,"¹⁷⁵ there is no showing either
12 that this wealth was a gratuity to General UMEZU
13 personally for we know not what nefarious activities
14 or that it was placed in his hands to be used for
15 other nefarious purposes. Inasmuch as the money is
16 stated to be disbursible to "Vice-Minister of War"
17 UMEZU -- the same style by which he is addressed in
18 all the official communications to the Vice-Minister
19 -- it may be assumed that it was placed at his dis-
20 posal for some official purpose. It may not unreason-
21 ably be supposed that this is the same secret fund in
22 question; but until we have proof of the purpose,
23 this evidence is utterly without probative value as
24

25 173. Tr. 36,858-9

174. Summation, SYY-31 (Tr. 42,043)

175. Summation, SYY-31 (Tr. 42,044)

176
1 to any issue in the case. The same may be said
2 of the other documents showing the passage of Army
3 funds through the hands of the Vice-Minister. 177

4 Lastly, General ULEZU as Vice-minister of
5 War is charged with responsibility for an alleged
6 massacre said to have taken place at Nanking during
7 his term of office. 178 (It should be said that presum-
8 ably this is the charge; the offense is laid as
9 having occurred on the 12th December, 1937" -- on
10 which day General ULEZU was Vice-Minister of War --
11 "and succeeding days" -- during some of which he
12 was not.) There is, however, no evidence to connect
13 the vice-minister with such a massacre, if it oc-
14 curred; the entire evidence of the nature of the
15 functions and duties of the vice-minister negatives
16 the idea of his having any ex-officio responsibility
17 in such a matter. Attempt to bring home to him
18 notice of the event has in no way been made; and in
19 the summing up of the case which they consider to
20 have been made against him the prosecution make no
21 mention of this charge, which has thus apparently
22 been abandoned.
23

24 176. Exhibit 2212 (Tr. 15,811)

177. Exhibits 2209 (Tr. 15,804) and 2211 (Tr. 15,810)

25 178. Indictment, Count 45.

COMMANDER IN CHIEF OF THE KWANTUNG ARMY.

1 27. On 7 September 1939 General UMEZU was
2 appointed Commander in Chief of the Kwantung Army,¹⁷⁹
3 arriving at his new post in Hsingking on the following
4 day, the 8th,¹⁸⁰ toward the end of the fighting at
5 Nomonhan. He came from a year and a half as Commander
6 of the First Army in North China,¹⁸¹ during which time
7 nothing is charged against him except as he is
8 alleged to bear responsibility for murder in relation
9 to attacks on the cities of Canton and Hankow.¹⁸²
10 These cities are in the south of China; there is no
11 evidence of any connection of his with the matter,
12 and it is one with which patently he had nothing to do.
13

14 The reasons for General UMEZU's selection as
15 Commander in Chief of the Kwantung Army are readily
16 discoverable--it is in fact recognizable as another
17 of those occasions mentioned earlier when he was
18 called upon to assume a post requiring an officer
19 endowed with calmness, disciplinary power and admin-
20 istrative ability. As the prosecution say, he "fully
21 conformed to the qualifications required for that
22 post."¹⁸³ The Nomonhan incident had then been in
23

24 179. Ex. 129, Tr. 803.

180. Testimony of HASHIMOTO, Tr. 22601.

25 181. Ex. 2282, Tr. 16259.

182. Indictment, Counts 46-47.

183. Summation, YY-34, Tr. 42046.

progress for over three months, and the Japanese
1 General Staff had been attempting to stop it before
2 the momentum generated by continued hostilities and
3 reinforcement which might be undertaken by both sides
4 should get out of hand and lead to war.¹⁸⁴ The last
5 fighting had taken place, it seems from the prosecution
6 evidence, in August¹⁸⁵, on the 30th of which month
7 the Imperial Headquarters issued an order to the effect
8 that the Nomonhan incident was to be put to the quickest
9 possible end. The European war at that time breaking
10 out, the opportunity was seized to order the Kwantung
11 Army to suspend operations and put an end to the fighting.¹⁸⁶
12 It was then that the new commander in chief was appointed.
13

14 The considerations upon which the selection
15 was made of General UMEZU as commander in chief have
16 been testified to by the then Chief of General Affairs
17 in the General Staff, General KASAHARA, who in discharge
18 of his duties was familiar with such personnel matters.
19 In order to carry out the basic policy of the Army,
20 of avoiding trouble with the USSR, he said: "UMEZU
21 was selected as the man to satisfy

22 184. Testimony of HASHIMOTO (Tr. 22,594-601).

23 185. Ex. 766, Tr. 7845.

24 186. Testimony of HASHIMOTO (Tr. 22,600).

1 best the following requirements as the Commander in
2 Chief of the Kwantung Army at that juncture; namely,
3 the character of the man should be such as to invite
4 no trouble with the USSR; he should be a fair, steady
5 and careful man who could put an immediate and sure
6 end to a trouble, and could settle it in a peaceful
7 manner. Not only he, the Commander in Chief, but
8 also the Chief of Staff, Vice-Chief of Staff and
9 staff officers in charge of operations were also
10 selected on the same principle.¹⁸⁷
11

12 Not only does all the evidence, of which
13 the record is so full, of General UMEZU's outlook
14 and principles confirm this reason for his designation
15 to the Kwantung Army post at such a time, but his
16 actions during the entire period of his service there
17 are equally determinative of the point. He was
18 selected as a man who could and would keep the peace;
19 he was sent to Manchukuo to keep the peace with the
20 USSR; through five tense years there he did keep the
21 peace.
22

23 28. The prosecution would like to believe
24 that "the defense in offering evidence about the accused
25 UMEZU mostly dealt with his activities in North China,
187. Tr. 23202.

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23 28. The prosecution would like to believe
24 that "the defense in offering evidence about the accused
25 UMEZU mostly dealt with his activities in North China,
187. Tr. 23202.

1 in the War Ministry and in the General Staff and was
2 carefully trying to forbear from mentioning his
3 activities when he held the post of Commanding General
4 of the Kwantung Army as well as from mentioning all
5 matters connected with the charge brought up against
6 UMEZU as to his preparing and planning aggression
7 against the USSR and his participation in the conspir-
8 acy.¹⁸⁸

9 The prosecution evidently overlooked the
10 weary weeks spent by defense counsel before the
11 Tribunal in arguing its motions for the production for
12 the cross-examination--which the prosecution were so
13 understandably reluctant to agree to--of the witnesses
14 whose affidavits were produced to incriminate General
15 UMEZU, in cross-examining those witnesses and thereby
16 offering evidence on the defendant's activities, and
17 in presenting, in general and individual defense
18 phases, its own evidence (which alone consumed more
19 than two weeks of court time) concerning General
20 UMEZU's activities as Commander in Chief of the
21 Kwantung Army. All this evidence has been fully dis-
22 cussed elsewhere¹⁸⁹ and will be touched upon here only
23 as it relates to General UMEZU. It is believed that
24

25 188. Summation, YY-72 (Tr. 42064).

189. Summation for the Defense, Section "H", "The Soviet Case" (cited hereinafter as "The Soviet Case") Sections 31-38 (Tr. 42790-833).

1 it can quite safely be said that there has not been
2 an iota of evidence introduced to connect General
3 UMEZU with any plan of aggression against the Soviet
4 Union. In view of the amount of the evidence of his
5 opinions, utterances and actions to this effect, it
6 would be an utter waste of time to analyze it in
7 detail. The prosecution themselves can offer in
8 support of their contention to the contrary only
9 statements in form of conclusions of absentee witnesses,
10 whose affidavits were taken where they are prisoners
11 of war in Siberia; when any of these has been pro-
12 duced for cross-examination the process has demon-
13 strated beyond dispute that General UMEZU never took
14 any part in preparations for or carrying out of
15 aggressive actions against the USSR. (On the value
16 of the testimony of the witnesses still not produced
17 for cross-examination, whose testimony has been
18 received "de bene esse" or "for such probative value
19 as it may have," compare the prosecution's statement
20 that those who were cross-examined "fully corroborated
21 their testimony"¹⁹⁰ with the actual cross-examinations
22 in the record. And see the analysis of one of these
23 cross-examinations in our general summation of the
24
25 190. Summation, YY-47 (Tr. 42051).

Soviet case.¹⁹¹

It will be noted that, as is common with the prosecution, no analysis of the defense evidence is attempted; either it is ignored or it is loftily characterized as being that of witnesses "obviously biased,"¹⁹² "strange and absolutely untrustworthy"¹⁹³ and such as can "by no means be regarded as objective, the more so as it directly contradicts the facts"¹⁹⁴ -- which is to say, contradicts the prosecution's evidence. The prosecution also point out that hearsay testimony, such as a defense witness was alleged to have given, has "absolutely no value for the Tribunal"¹⁹⁵ -- a novel position when it is considered that some ninety-five per cent of the Soviet prosecution's evidence was hearsay. The defense at any rate produced the witnesses who gave the hearsay, enabling the prosecution to cross-examine to ascertain the bases of their knowledge.

29. To summarize, then, what has been said elsewhere of General UMEZU's part in "carrying out of military preparations for a war of aggression against the Soviet Union," so far as it relates directly to

191. The Soviet Case, Sec. 35 (Tr. 42802-19).

192. Summation, YY-73 (Tr. 42065).

193. Summation, YY-82 (Tr. 42073).

194. Summation, YY-72 (Tr. 42065).

195. Summation, YY-73 (Tr. 42067).

1 the arguments advanced in the summation against him.

2 General UMEZU's attitude toward the Soviet-
3 Japanese Neutrality Pact seems, while intelligent and
4 proved by events to be correct, in the prosecution's
5 view not proper. It is charged against him that his
6 chief of staff told his subordinates that conclusion
7 of that Pact did not mean that Japan could abandon
8 all her preparations for military operations against
9 the USSR.¹⁹⁶ It certainly did not--as was proved by
10 the devastating blow by the Red Army in August 1945--
11 and we need not argue again, or at all, whether it is
12 criminal aggression to be prepared for operations
13 against a potential enemy. It remains reasonable to
14 suppose that the USSR itself had planned and made
15 preparations during the years before that devastating
16 blow. Again, in June 1941 General UMEZU said--or at
17 least so says that paragon of veracity, Ambassador
18 General Ott of the German Reich, on the alleged auth-
19 ority of one "Prince Urach," whose nationality,
20 position, source of knowledge nor principedom is dis-
21 closed by any evidence--that the Neutrality Pact must
22 undergo a change as German-Soviet relations changed.¹⁹⁷

23 The statement may have been made by General UMEZU--

24 196. Summation, YY-37 (Tr. 42047).

25 197. Summation, YY-38 (Tr. 42048).

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8 all her preparations for military operations against
9 the USSR.¹⁹⁶ It certainly did not--as was proved by
10 the devastating blow by the Red Army in August 1945--
11 and we need not argue again, or at all, whether it is
12 criminal aggression to be prepared for operations
13 against a potential enemy. It remains reasonable to
14 suppose that the USSR itself had planned and made
15 preparations during the years before that devastating
16 blow. Again, in June 1941 General UMEZU said--or at
17 least so says that paragon of veracity, Ambassador
18 General Ott of the German Reich, on the alleged auth-
19 ority of one "Prince Urach," whose nationality,
20 position, source of knowledge nor principedom is dis-
21 closed by any evidence--that the Neutrality Pact must
22 undergo a change as German-Soviet relations changed.¹⁹⁷
23 The statement may have been made by General UMEZU--

24 196. Summation, YY-37 (Tr. 42047).

25 197. Summation, YY-38 (Tr. 42048).

1 it is perhaps the unique example of introduction
2 against him of purported words of the man himself--it
3 is one obviously true, not sinister unless and until
4 explained, and no evidence of criminal intent.

5 "At the Imperial Conference of July 2, 1941
6 a decision was reached" for Japanese policy vis-a-vis
7 the USSR.¹⁹⁸ General UMEZU was of course not there.

8 "Numerous evidentiary documents offered to
9 the Tribunal establish the fact that UMEZU favored a
10 close military alliance with Germany against the
11 USSR and that he, together with War Minister TOJO
12 and Chief of the General Staff SUGIYAMA, Gen, was an
13 author of the 'Kantokuen' plan and prepared the
14 Kwantung Army in 1941-42 for invading Soviet
15 territory."¹⁹⁹ With the exception of one paragraph
16 of de bene esse hearsay the five exhibits cited to this
17 passage offer no proof of General UMEZU's attitude
18 toward a Japanese-German alliance, no proof of his
19 authorship of the Kantokuen, no proof of his preparing
20 to invade Soviet territory. It is amusing to note
21 what these five documents, bearing on General
22 UMEZU's activities in 1941, are: ²⁰⁰ two are from his
23 days as Vice-Minister, one being dated 1937 and the
24

25 198. Summation, YY-39 (Tr. 42048).

199. Summation, YY-40 (Tr. 42048).

200. Ex. 770, Tr. 4871; Ex. 242, Tr. 2997.

other 1938; the former is the collection of excerpts

from the War Ministry Great Diary, cited here one may
 1 surmise for the telegram, already discussed and quoted
 2 above, relating to air line connections between Japan
 3 and Germany;²⁰¹ the other is that, also treated of
 4 heretofore, concerning Manchukuo's adherence to the
 5 Anti-Comintern Pact.²⁰² These constitute, together with
 6 the hearsay testimony of General KUSABA--he, may I
 7 remind the Tribunal, who took cyanide rather than
 8 stand in the box here and undergo cross-examination
 9 on this affidavit--that "they," presumably referring
 10 back to the preceding sentence mentioning Generals
 11 TOJO, SUGIYAMA and UMEZU, "as the main supporter
 12 (sic!) of the Japanese-German Military Alliance
 13 against the USSR," did certain things,²⁰³ the proof of
 14 the Germanophilia and Russophobia. The two remaining
 15 are the "Prince Urach" report of Ott's, and a speech
 16 by General UMEZU's chief of staff to his army com-
 17 manders in April 1941.²⁰⁴ The Chief of Staff didn't
 18 touch upon the points to which the prosecution cite
 19 these documents; he said that the Soviet-Japanese
 20 Neutrality Pact did not mean that Japan might "slack
 21 down" its military preparations, that the Army would
 22
 23

24 201-202. Supra, Section 19.

25 203. Ex. 838, Tr. 8164, p. 17 not read.

204. Ex. 3701, Tr. 36907.

not make any change in its policy--but that "useless
1 speeches and actions of soldiers and officers which
2 would negate the effectiveness of this pact should
3 be checked absolutely." And, because the accumulation
4 of Soviet military power would exert increasing pres-
5 sure on Japan and Manchukuo, "we must steadily
6 strengthen and expand our preparations for war
7 against the Soviet Union, and on the other hand, we
8 must promote friendly relations with Russia. Together
9 with striving for the realization of armed peace, we
10 must make preparations for certain victory in mili-
11 tary operations against the Soviet Union in case of
12 emergency." Perhaps no more need be said of the
13 extent to which these treasured documents of the
14 prosecution's prove the aggressive intent of General
15 UMEZU?
16

17 As for the Kantokuen, it has been fully
18 demonstrated by the evidence to have been a mere plan
19 of reinforcement of the Kwantung Army--a matter which
20 we have already argued at length to the Tribunal²⁰⁵ --
21 and not a "war plan." "In July 1941," the prosecution
22 say, thereby giving away the whole show, "Imperial
23 Headquarters instructed the Commanding General of the
24 Kwantung Army that the purpose of the 'Kantokuen' was
25 205. The Soviet Case, Sec. 35 (Tr. 42800-819).

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25 205. The Soviet Case, Sec. 35 (Tr. 42800-819).

to strengthen the preparedness of the Army against
 the USSR."²⁰⁶ That disposes of the Kantokuen as a
 war plan. It is disposed of as a product of the
 brain of General UMEZU by the fact that there is no
 evidence that he had any part in creating it. There
 is, to be specific, exactly the one sentence in the
 affidavit of KUSABA, if that can be called evidence:
 "TOJO, as the minister of war, suggested and made the
 'Kan-Toku-En' plan with the Chief of the General Staff
 SUGIYAMA Gen and the Commander of the Kwantung Army
 UMEZU Koshijiro (sic!)."²⁰⁷ It would be interesting
 to learn how this fact was learned by General KUSABA,
 who was in Manchuria as commander of the Kwantung
 Defense Army from 1941 to 1942,²⁰⁸ thereafter until
 1944 commander of an army,²⁰⁹ in 1946 dead of his own
 hand. There is, of course, no evidence that General
 UMEZU visited Tokyo or Generals TOJO or SUGIYAMA
 Hsingking; the prosecution, who say that they captured
 the files of the Kwantung Army in Hsingking, have
 produced no written communication among these persons;
 no prisoner of war has been brought into court to be

206. Summation, YY-41 (Tr. 42049).

207. Affidavit of KUSABA, Ex. 838, Tr. 8164, p. 16,
 not read.

208. Id., p. 13, not read.

209. Id., p. 14, not read.

1 asked how he knows this fact. It can, however, be
2 prophesied almost exactly what General KUSABA would
3 have said if cross-examined on the basis of this
4 conclusion of his; that the Kantokuen was drawn by
5 War Ministry (TOJO) and General Staff
6 (SUGIYAMA): in Tokyo that the parts of it requiring action
7 in Manchukuo were forwarded to the Kwantung Army; and
8 that the Kwantung Army (UMEZU) accordingly drew the
9 necessary plans and took the necessary steps to
10 effectuate it. This was the participation, as the
11 evidence shows, of the Kwantung Army in the drafting
12 of the other types of plans concerning it.

13 Of these other plans it is the annual
14 operations plans of which the prosecution make the
15 most. The section on this subject in the defense
16 summation of the Soviet case is referred to for
17 detailed consideration of the evidence.²¹⁰ We submit
18 that that evidence, as there analyzed, shows no "war
19 plan" ever drawn against the Soviet Union during
20 General UMEZU's term as Commander in Chief of the
21 Kwantung Army. It shows that annual operations
22 plans -- such as, in the words of the President of
23 the Tribunal, "we know * * * are prepared in the
24 general staff offices of other countries"--were
25 210. The Soviet Case, Sections 31-34 (Tr. 42790-99).

1 provided in the event of Japanese collision with,
2 among other countries, the Soviet Union; that those
3 plans were sent to the Kwantung Army, which in
4 accordance with them drew the necessary plans for
5 their implementation. They were not originally con-
6 ceived by the Kwantung Army, but were the directives
7 by which it was bound. It is not very odd that the
8 Kwantung Army's operations plans were signed by the
9 Commander in Chief.²¹¹

10 Finally, the prosecution have argued that
11 the proof of the aggressive intent of General UMEZU
12 is shown by the fact of the Kwantung Army's having
13 engaged in the various routine activities which occupy
14 armies throughout the world. Thus, "UMEZU himself
15 signed a directive with regard to the additional
16 training of Russian interpreters."²¹² The United
17 States Army, as is well known, had been training
18 Japanese interpreters for years before 1941; is there
19 an army which does not train interpreters in the
20 languages of potential enemies--or allies? Thus,
21 "Under UMEZU's supervision the 5th section studying
22 the occupation regime for the Soviet territories to
23 be occupied by the Kwantung Army was formed."²¹³ A

24 211. Summation, YY-47 (Tr. 42051).
25 212. Summation, YY-44 (Tr. 42050).

213. Summation, YY-45 (Tr. 42050).

1 group of officers was sent to areas then occupied to
2 study the subject of military government! White
3 Russians were to be employed and trained against
4 their use in the event of a war against the USSR!
5 Meteorological stations were, no doubt, established.
6 Are these things important in proving General UMEZU's
7 intent to wage war?

8 30. That General UMEZU's principle and
9 practice in relations with the USSR, as Commander in
10 Chief of the Kwantung Army, was one of the most com-
11 pletely defensive and nonaggressive nature has been
12 shown by voluminous evidence, none of it impeached or
13 contradicted by anything but speculation and surmise
14 from the prosecution. Of course, this evidence was
15 given for the most part by men who had served under
16 General UMEZU--they being those who know what his
17 policy and his practice was--and the evidence is
18 therefore by the prosecution's test biased, unreliable
19 and of no probative value. Nevertheless, there it
20 stands in the record, uncontradicted, and I venture
21 to believe that, fitting as it does all else that we
22 know of this defendant's policies and character, it
23 cannot be doubted to be the truth. It would be
24 tedious to review it all; but a few quotations may
25 be given. TAKAKURA Tadashi, a Manchukuo Government

1 official during General UMEZU's tenure, testified that
2 his superior, Chief of General Affairs TAKEBE Rokuzo,
3 often told him "that Commander in Chief of the
4 Kwantung Army UMEZU was quite careful toward the
5 USSR relations and wished that the government staff
6 members would avoid so far as possible any action
7 which might irritate the USSR." ²¹⁴ The witness was
8 not cross-examined. TAKEBE himself, being produced
9 as a prosecution's witness, testified on behalf of
10 General UMEZU as follows:

11 "Q. Did General UMEZU, Commander in Chief
12 of the Kwantung Army, give to you as Chief of General
13 Affairs of Manchukuo, instructions concerning the
14 relations to be maintained between Manchukuo and the
15 USSR, during his term?
16

17 "A. The Commander in Chief of the Kwantung
18 Army, General UMEZU, gave to me instructions upon my
19 taking the position of Chief of General Affairs of
20 Manchukuo to the effect that now was the time that the
21 Government of Manchukuo should be most careful not to
22 irritate the USSR in matters of dissemination of in-
23 formation and propaganda.

24 "Q. On the basis of the above instructions,
25 214. Tr. 37127-28.

1 how did you guide and instruct your men?

2 "A. I conveyed the instructions to the
3 vice-ministers of all the departments.²¹⁵

4 The witness was not cross-examined.
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215. Tr. 36894-95.

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1 General KOZUKI, Yoshio, who served as an
2 army commander under General UMEZU in 1942-43, testi-
3 fied to this effect concerning the policy of the
4 Commander-in-Chief:
5

6 "Upon my arrival in Hsingking, Commander
7 UMEZU gave me instructions that from the
8 standpoint of Japan's general circumstances I
9 was to take all possible and complete measures
10 to avoid absolutely any trouble with the
11 USSR and thereby to avoid irritating them.

12 "Lieutenant-General YOSHIMOTO, Chief of
13 Staff of the Kwantung Army, told me the same
14 thing on the same occasion. He particularly
15 emphasized that I must strictly abide by the
16 Border Guard Regulations and that in going
17 in or out of the restricted zone of oper-
18 ation, even if it be a patrol, the permission
19 of the Commander in Chief must be obtained.
20 After that, at Commanders' Conferences or
21 when he came to Chietao on a field inspec-
22 tion, Commander UMEZU repeatedly reminded us
23 to avoid anything that might irritate the
24 USSR.
25

"In accordance with the policy of my
senior officers, I instructed my subordinates

1 and guided them so as not to irritate the
2 ²¹⁶
3 USSR."

4 The witness was not cross-examined on this point.

5 HANAWA Yoshiyuki, who for four years served
6 as councillor of the Embassy in Hsingking when Gen-
7 eral UMEZU occupied the post of Ambassador, stated
8 that the General's principles, which he well knew,
9 were to keep the peace:

10 "Ambassador UMEZU's first principle was
11 maintenance of peace and order in Manchuokuo;
12 he adopted the policy of having no trouble
13 with the Soviet for the sake of the healthy
14 progress of Manchoukuo . . . This principle of
15 his was strengthened after the outbreak of the
16 ²¹⁷
17 Pacific War" .

18 And the witness mentioned specific practical appli-
19 cations of this principle: that General UMEZU had
20 reported to the Emperor of Japan that he was devot-
21 ing his utmost efforts to keeping the peace with
22 the Soviet Union, receiving the Emperor's commenda-
23 tion; that, at the time of settlement of the
24 Nomonhan Incident, he had instructed his subordi-
25 nates that any border incidents must be settled
by consultation with Tokyo; and he warned the

(216. Tr. 23,458-59
217. Tr. 23,392.)

1 Dairen police against interfering with Soviet
2 consulate personnel; and others ²¹⁸ . The witness
3 was not cross-examined.

4 Ambassador to the U.S.S.R. SATO Naotake,
5 passing through Hsingking en route to the U.S.S.R.
6 in March 1942, in the course of conversation with
7 General UMEZU said:

8 "that it was most important that the
9 Kwantung Army should take no action which
10 could be construed as aggressive toward the
11 USSR or could give them provocation in any
12 way. General UMEZU and others agreed with my
13 opinion, and General UMEZU told me that all
14 dispositions of the Kwantung Army were
15 defensive and that from the Kwantung Army
16 there would be no manifestations of an
17 aggressive attitude" ²¹⁹ .
18

19 The witness was not cross-examined.

20 Section 31. The "Border Guard Regulations"
21 were mentioned above. A brief description of them may
22 well end our consideration of General UMEZU's attitude
23 toward the Soviet Union. These regulations were
24 explained in detail by General IIMURA Jo, who went
25 to the Kwantung Army with General UMEZU as his

1 chief of staff, in 1939. The first instructions
2 of the new commander-in-chief, he testified, were
3 that the guards on the border line were to be with-
4 drawn and other steps taken to avoid border troubles;
5 all subordinates were to be made to understand well
6 this intention of the commander-in-Chief. The
7 "Border Guard Regulations" themselves were drawn by
8 General UMEZU and his staff on the basis of instruc-
9 tions given him upon his appointment; they laid
10 down the principle that complete prevention of
11 border trouble was to be insured, for which purpose
12 the border guards were withdrawn and a "demilitarized
13 zone" was established behind the border, into which
14 soldiers might not penetrate even in patrolling ²²⁰ .
15 Incidents on the border were to be reported immedi-
16 ately to higher headquarters, taking priority over
17 all other business. The same facts were testified
18 to by General MATSUMURA Tomokatsu, once Vice-Chief
19 of Staff of the Kwantung Army, a prosecution witness
20 who testified also to having often heard from General
21 UMEZU that his chief policy was to keep the peace
22 with the USSR and to avert the occurrence of disputes
23 which might damage peaceful relations ²²¹ . That
24 the commands subordinate to the Kwantung Army drew
25

(220. Tr. 23,396-99
221. Tr. 23,468-71)

up border guard regulations suitable to their jurisdictions on the basis of those promulgated by the Kwantung Army was testified to by General YAMAMURA, a garrison force commander. Further, he testified, even if Soviet soldiers should violate the border (which in his area was the thread of the stream of the Amur River), they were not to be fired upon, but should only be stopped upon reaching Manchukuo soil; this witness heard frequently from the division commander to whom he was subordinate of General UMEZU's admonitions at the conferences of army, division and other commanders that there must be no trouble with the Soviet forces, and that indeed he would punish and discharge anyone who made a provocative move against them²²². General KASAHARA Chief of Staff of the Kwantung Army, 1942-45, and before that Vice-Chief and a division commander, testified to the same effect concerning the Border Guard Regulations and General UMEZU's instructions to prevent trouble on the border; General UMEZU had admonished him upon his assumption of the post of chief of staff, he said, that in relations with the USSR their principle must be "not to invade, not to be invaded"²²³. The prosecution did not

(222. Tr. 23,415-19
223, Tr. 23,203)

1 cross-examine these witnesses on the Border Guard
2 Regulations or General UMEZU's attitude and princi-
3 ples, but do say that in cross-examination General
4 KASAHARA

5 "was exposed as an author of a proposal
6 for an aggressive war against the Soviet
7 Union" ²²⁴ ;

8 they forget that even at the time of the expose
9 (somewhat less sensational than they would have
10 us believe) the President of the Tribunal pointed
11 out that "it does not affect his credibility" ²²⁵ .

12 In sum, then, the entirety of the evidence
13 in the case compels the conclusion that General UMEZU's
14 policy toward the USSR was one of peace, one not
15 only of taking no aggressive action but even of
16 limiting defensive action in such a way that it
17 should not give offense to or irritate the Soviet
18 Union.
19

20 Section 32. Although General UMEZU is
21 charged in the counts relating to the planning, pre-
22 paration and initiation of the Pacific War, there is
23 of course no evidence to connect him with those
24 charges. The summation treats of "UMEZU's role in
25 the Pacific War" in fewer than two hundred words; but

(224. Summation, §YY-78, Tr. 42,072
225. Tr. 23,261)

1 this is only leading up to the inevitable conclusion,
2 that

3 "all the counts of the Indictment on which
4 UMEZU is charged have been substantiated
5 by the Prosecution's evidence"²²⁶ .

6 Aside from two sentences of discussion of prisoners
7 of war in Manchuria, which attempt no argument of
8 liability, the chief assertion contained in this
9 section is that

10 "UMEZU took all measures to ensure that
11 the progress of the Pacific War be favor-
12 able for Japan and that the South Seas
13 area be occupied"²²⁷ .

14
15 So far as concerns the first clause, it need be
16 said only that I hope no words of mine will ever
17 suggest to the Tribunal that General UMEZU ever,
18 at any time, failed to do what he could to insure
19 that Japan would win the war which it was fighting
20 for its national existence. As to the second, his
21 taking measures concerning occupation of the South
22 Seas area must seem rather curious in view of the
23 fact that he was quite fully occupied in Manchuria,
24 which is distant from the South Seas, in keeping
25

(226. Summation, §YY-83, Tr. 42, 074
227. Summation, §YY-62, Tr. 42, 061)

1 the peace with the USSR. The evidence cited by
2 the prosecution to sustain these ridiculous con-
3 clusions is this. First, an excerpt from the
4 interrogation of the defendant HOSHINO, in which
5 on the page of the record cited in the summation
6 is contained the statement that "I think that
7 Manchuria rendered full help" in connection with
8 the war which Japan was then carrying on ²²⁸. Next,
9 an excerpt from a publication of the Kyowakai pur-
10 porting to be words of General UMEZU spoken to the
11 convention of the Society, in which he stated that
12 the Japanese Army and Navy had won a series of
13 brilliant victories in the Pacific Ocean, annihi-
14 lating a number of bases of the enemy in East Asia,
15 and that members of the Kyowakai should make sac-
16 rifices for victories in the war ²²⁹.

17 An additional charge against General UMEZU
18 during the Pacific War is that he

19 "bears the responsibility for the illegal
20 temporary courts martial trying cases of
21 POW's operating in the Kwantung Army and
22 for the sentences they handed down" ²³⁰.

23 To this assertion is cited exhibit 1998, which pur-
24 ports to be a list of prisoners of war punished by
25

(228. Tr. 5,178

229. Ex. 713A, Tr. 7,610

230, Summation, §YY-63, Tr. 42,061)

1 courts martial; it shows no connection with the
2 commander-in-chief of the Kwantung Army nor approval
3 by him of its sentences, but shows only four cases
4 of court martial sentences imposed by a court of
5 the Kwantung Army upon prisoners of war. Of these
6 four, three were sentences of death stated to have
7 been imposed upon charges of murder and attempt
8 at murder; the fourth was a sentence of seven years
9 imprisonment for "violation of law of punishing
10 POW's (violation of oath)"²³¹. There is no showing
11 by the prosecution whether the sentences imposed
12 by this court were justified by evidence, or whether
13 they were carried out or were disapproved, modified
14 or mitigated; defense evidence on the other hand
15 shows the prisoners to have been duly sentenced
16 after trial, on evidence showing the commission
17 of homicide in the attempt to make good their es-
18 cape, which is recognized by international law to
19 constitute murder²³². The burden is on the prose-
20 cution to show an illegality of the proceedings.

21 General UMEZU is alleged also to bear "the
22 responsibility for the mistreatment of the POW's
23 in the POW camps in Manchuria"²³³. The four exhibits
24

25 (231. Ex. 1998, page 2
232. Ex. 3142, Tr. 27,963, not read.
233. Summation, SYY-64, Tr. 42,061)

cited to this allegation are the interrogatories
of four former American soldiers who had been
1 prisoners of war in Manchuria at various times
2 during the Pacific War. They show rough conditions
3 in some instances, and that many prisoners died of
4 disease during those times. One of the affiants
5 tells of prisoners of war being killed by American
6 bombing and explosion of a near-by munitions plant;
7 but the prosecution evidence itself shows that this
8 incident occurred in August 1944, after General
9 UMEZU had departed from Manchukuo²³⁴. Nothing in
10 any of this testimony tends to show any connection
11 with the Commander-in-Chief of the Kwantung Army
12 except that the acts performed were those of his
13 remote subordinates. The vicarious responsibility
14 for such illegal acts as may have existed is of
15 course undeniable; but a considerable body of defense
16 evidence, which I shall not analyze in detail.
17 raises a number of questions concerning the ille-
18 gality, and attests to the interest of General
19 UMEZU in the circumstances of prisoners of war and
20 the amelioration of their conditions. A medical
21 report, for example, shows that the prisoners who
22 suffered with or died of disease in Manchuria were
23 (234. Ex. 1913-A, Tr. 14,193)
24
25

1 the survivors of Bataan, who had suffered hardship
 2 and privation en route to Manchuria and had arrived
 3 there in very poor state of health²³⁵. There is in
 4 evidence an order of General UMEZU's, dated three
 5 months after arrival of the prisoners, for assign-
 6 ment of additional medical and epidemic-prevention
 7 personnel to the camp²³⁶. Reports of the represen-
 8 tative of the International Committee of the Red
 9 Cross of his visits to that camp a few months after-
 10 ward show conditions to have been excellent²³⁷.

11 Prosecution evidence is claimed to show
 12 illegal working of prisoners of war in a munitions
 13 factory; but the testimony of the president of the
 14 company which operated the factory shows that its
 15 product had no military significance, nor were orders
 16 received by the company from military sources²³⁸.

17 It is not contended even by the prosecution
 18 that General UMEZU had any responsibility whatso-
 19 ever in connection with the planning or initiating
 20 of the Pacific War; there is in fact in the record
 21 evidence establishing that General UMEZU, being
 22 then in Manchuria, was not even consulted beforehand

23 (235. Ex. 3114, Tr. 27,816

24 236. Ex. 3113, Tr. 27,815

237. Ex. 3096, Tr. 27,679; Ex. 3136, Tr. 24,917

25 238. Testimony of KUBOTA Tokujiro, Tr. 27,885)

239
1 concerning the plans for the Pacific War.

2 Section 33. The prosecution devoted a
3 considerable part of their summation to discussion of
4 General UMEZU's supposed domination of Manchuria.
5 It is unnecessary for us to discuss the general ques-
6 tion of the extent, if any, to which Manchukuo was
7 subject to Japanese control; for whatever the Japanese
8 policy vis-a-vis Manchukuo may have been, it was a
9 policy adopted long before, without the participation
10 of General UMEZU, one which he merely continued and
11 administered when he was appointed commander-in-
12 chief of the Kwantung Army. I shall therefore
13 touch on only a few points which affect General
14 UMEZU directly. Much of the evidence purporting
15 to show his implication in the domination of Man-
16 churia was that of the former Emperor of Manchukuo,
17 Pu-Yi. The witness was extensively cross-examined
18 on a great variety of subjects, chiefly with the
19 view of destroying his credibility, which it can
20 be confidently submitted was achieved. I shall
21 discuss briefly the question of the credibility
22 of the witness, and with that leave the question of
23 control of Manchuria by General UMEZU as proved by
24 his testimony.
25

1 For the specific purpose of testing the
2 credibility of this witness, he was asked to identify
3 a document as being in his own handwriting. He
4 denied having written the document ²⁴⁰. The witness
5 having admitted writing another document with which
6 he was confronted ²⁴¹, the two were submitted by
7 prosecution and defense to handwriting experts for
8 opinion. The evidence of the defense's witness
9 was reasoned, exhaustive and convincing of the
10 validity of his conclusion that the document admit-
11 ted and the one denied by Pu-Yi to have been
12 written by him were in the same hand ²⁴². As against
13 this, the prosecution produced its own witness, who
14 in a brief and general affidavit gave it as his
15 opinion that the document in question was not writ-
16 ten by the hand of Pu-Yi ²⁴³. This condition would
17 present an issue of fact for decision of the Tribu-
18 nal but for one thing. The prosecution's self-styled
19 expert on handwriting made quite clear the value of
20 his testimony when he reported to the Tribunal as
21 the result of his comparison of the specimens that
22 not only was the disputed document not in the hand
23 of the witness, but the admittedly genuine document
24

25 (240. Tr. 4,115

241. Tr. 4,292

242. Testimony of TAKAMURA, Tr. 20,189-206

243. Testimony of Chang Feng-chu, Tr. 15,542, 15,708)

1 also was not in the hand of the witness. The dis-
2 puted document, by the way, was put in evidence by
3 the prosecution²⁴⁴, who thus assumed the burden of
4 proving its spuriousness. The outcome of the con-
5 troversy is disastrous to the witness' credibility.
6 It is immaterial for our purposes whether we accept
7 the testimony of the handwriting expert and consider
8 Pu-Yi to have committed perjury in admitting execu-
9 tion of the second document; or reject the testimony
10 of the expert as having no probative value, thus
11 leaving it uncontradicted in the evidence that the
12 letter was written by Pu-Yi and that he therefore
13 committed perjury before the eyes of the Tribunal
14 when he denied it. Either alternative means that the
15 witness is so discredited that his testimony cannot
16 be regarded by the Tribunal as having any probative
17 value.
18

19 Section 34. The prosecution, by the way,
20 have been very quiet about Pu-Yi since the returns on
21 the handwriting question have been in. This issue
22 of the handwriting was made up with great fanfare
23 by the Chief Prosecutor, with much mention of "fraud"
24 and "forgery"; the letter was to have been a "valuable
25 piece of evidence in our opinion when it is translated

1 and analyzed as proof of the conspiracy in this
2 case"²⁴⁵. So far as I have been able to note, the
3 analysis appears in no part of the final submissions
4 of the prosecution. In any event, the complete
5 incredibility of this witness is, it is submitted,
6 precisely the conclusion which the Tribunal must
7 come to quite independently of the handwriting ques-
8 tion which was introduced to test credibility. The
9 cross-examination of the witness, together with sur-
10 rounding circumstances, have clearly shown his testi-
11 mony to be completely incredible. Under cross-
12 examination he repeatedly contradicted himself, he
13 evaded the giving of a direct answer to almost
14 every question, he consistently took refuge in "I
15 cannot remember " (he could not remember his actions
16 or their dates, he elaborated, because he was
17 "forced", performed the acts under Japanese "compul-
18 sion"); he asserted repeatedly that the whole of
19 his life as Emperor of Manchukuo was a fraud, forc-
20 ed upon him against his will, so that while he may
21 have said the things that he said, done the things
22 he did, he didn't mean them but said them under com-
23 pulsion"²⁴⁶. It will be noted that at the time of
24
25

(245. Tr. 4,160-62

246. See the cross-examination, Tr. 4,052-349)

1 his testimony here he was in two senses acting un-
2 der compulsion: he was before coming here and is
3 since his return a prisoner in Siberia; since
4 1932 he has been a fugitive from the justice of
5 the Chinese Government, which has charged him with
6 treason.

7 This witness in general made such an impres-
8 sion that, it is believed, the Tribunal will agree
9 that even taking his testimony at face value it
10 does not support the contentions which he made. He
11 was, finally, contradicted in numerous instances by
12 other evidence of both prosecution and defense; but
13 it would be a waste of time to collect these. One
14 or two may be mentioned.

16 This witness testified that the conscription
17 or labor under the National Labor Service Laws was
18 originated by General UMEZU and was a measure of en-
19 slavement of the people of Manchuria and intended to
20 "colonize" it, whatever that may be ²⁴⁷. The defense
21 evidence, through the witness HANDA, showed consider-
22 ably different reasons for the adoption of the
23 National Labor Service Law from those indicated by
24 the conclusions of Pu-Yi ²⁴⁸. As another example,
25 the Manchukuo National Army was alleged to constitute

(247. Tr. 4,037

248. Tr. 37,119-23)

1 a part of Japanese preparations for aggression from
 2 Manchuria. As against this, the prosecution's
 3 witness TAKEBE admitted that the National Service
 4 Law under which the Army was organized contained no
 5 provisions for the reserve ²⁴⁹, which negatives any
 6 idea of it as a preparation for war; and several
 7 defense witnesses have testified that the Manchukuo
 8 Army was for the purpose of keeping the public peace,
 9 that the right of command of that army was in the
 10 hands of the Emperor, and that its personnel, at the
 11 time of its maximum size, amounted to no more than
 12 one hundred thousand. ²⁵⁰

13 Section 35. General UMEZU's connection
 14 with Manchukuo is submitted to have been shown by no
 15 evidence to have had anything to do with aggression.
 16 He did not create Manchukuo; no evidence connects him
 17 with the policy which brought it into existence. He
 18 was designated in the ordinary course of a soldier's
 19 life as Commander-in-Chief of the Kwantung Army; he
 20 went to Manchukuo, which he found already there,
 21 he took up the duties, and whatever powers were con-
 22 comitant with them, of the position as they were al-
 23 ready established. There is no showing that he

25 (249. Tr. 31,876
 250. Testimony of KATAKURA Tadashi, Tr. 19,053-54;
 OBI Tetsuzo, Tr. 37,116-17; and MATSUMURA
 Tr. 23,286)

1 attempted to extend his powers or to use them to the
2 detriment of the people and the country of Manchukuo.
3 On the other hand, there are many evidences of
4 his intent and acts to improve conditions in those
5 regards. Thus the prosecution witness TAKEBE
6 brought from internment in the U.S.S.R. to testify
7 that he, as Chief of General Affairs of Manchukuo,
8 was with the country under the domination of the
9 Commander-in-Chief of the Kwantung Army, neverthe-
10 less stated this quite unequivocally. During his
11 term of service -- four years of it, 1940-44, during
12 General UMEZU's command there -- it was the purpose
13 of his office to develop Manchukuo as a sound and
14 healthy state; the standard of living of the people
15 was much raised, those receiving education increased
16 considerably, sanitary conditions and the conditions
17 of the farmers were improved, social services and
18 medical facilities were greatly expanded and improv-
19 ed. To the doing of these things he was "encouraged
20 and exhorted by the Co. mander of the Kwantung Army." 251
21 General UMEZU served as Commander-in-Chief of
22 the Kwantung Army for the extraordinary term of
23 almost five years, during three of which his country
24 was at war with the United States and Britain, and
25

1 the U.S.S.R. with Germany, Japan's ally. Perhaps
2 the most remarkable evidence of his character and
3 intentions is not even that in such times he succeed-
4 ed in keeping the peace in Manchukuo; but that even
5 in such a war-time there was, so far as any evidence
6 shows, no move by him which can be construed as ag-
7 gressive or oppressive.

8 General UMLZU made no policy in connection
9 with Manchukuo, and if the Manchukuo venture was
10 aggression, he is submitted to bear no part of
11 responsibility for it. Certainly being in Manchukuo
12 as commander of Japanese forces was not the waging
13 of aggressive war, for there was no war. If General
14 UMLZU is to be convicted on any charges growing out
15 of his service in Manchukuo, it must be on the
16 basis solely of his having accepted and discharged
17 his soldier's duty. The imposition of such a lia-
18 bility will be to hold military men to an exceed-
19 ingly high standard of expertness in guessing what
20 routine commands may in some future time be regarded
21 as having constituted aggression.
22
23
24
25

CHIEF OF THE GENERAL STAFF

Section 36. On 18 July 1944 General UMEZU was appointed Chief of the General Staff. His reaction to the appointment is interesting. When he received, on the previous day, the informal notification by telephone from Tokyo, his impulse was to refuse, according to his Vice-Chief of Staff IKEDA, who had chanced to be with him at the time. "Since from the very beginning I have opposed the war against the United States, I hate to accept this appointment," he said, and asked whether it was not possible to refuse, pointing out that there was no longer anything that a Chief of the General Staff could do to save the situation. Realizing, however, that military assignment could not, as could the political office of the War Ministership, be declined, he resigned himself to it and took over the post²⁵². At the same time he mentioned that the war must be ended as soon as possible, diplomatic or other necessary measures being taken to that end. During his service as Chief of the General Staff, which lasted until the end of the war and after, there were only three points of significance to his case. These are the question of responsibility for the Pacific

1 War, which he undoubtedly waged for the thirteen
2 months of it which remained; that of responsibility
3 for maltreatment of prisoners of war; and that of the
4 ending of the war.

5 Section 37. The first question, that of
6 General UMEZU's responsibility for the conduct of the
7 war, is shortly disposed of. The prosecution's posi-
8 tion, in the individual summation, is that he is
9 responsible for "the continuation for over a year of
10 a war of aggression in the South Seas area and in
11 China."²⁵³ In answer to this it is sufficient to
12 refer to the prosecution's own admission in its general
13 summation of the non-responsibility of one who merely
14 carries out already-adopted policy²⁵⁴. General UMEZU
15 having had nothing to do with creation or adoption of
16 the policy which brought about the Pacific War, but
17 having merely been called in, when conditions had
18 become desperate, on the usual assumption that he,
19 if anyone, could solve the grave problems of manage-
20 ment and enforcement of control involved, he merely
21 carried out a soldier's duty, to fight. No question
22 of policy is involved, no question of planning or
23 initiating any war. The war which he waged was not
24 his own, but one inherited.

(253. Summation, SYY-65, Tr. 42,062.

254. Supra. §1.

1 Section 38. The prisoner of war question
2 is one on which much evidence has been introduced,
3 and ingenious efforts made to draw distinctions
4 between responsibilities of War Ministry and General
5 Staff. The question is, however, really quite simple.
6 It is beyond any doubt that prisoners of war are
7 subject to the control of the Minister of War. As
8 a matter of international law, this follows from the
9 provision of Hague Convention IV, ratified by Japan:

10 "Prisoners of war are in the power
11 of the hostile Government, but not of the
12 individuals or corps who capture them" ²⁵⁵.

13 Within the Army organization itself, it is the Min-
14 ister of War who is representative of the Government;
15 the General Staff of Japan, representing the
16 entirely distinct right of Supreme Command, is no
17 part of the government ²⁵⁶. So far, therefore, as
18 the Army is chargeable with prisoners of war, it is
19 the Minister of War as a member of the Government
20 in whom the responsibility must be lodged. An at-
21 tempt has been made to avoid this responsibility by
22 redefining the term "prisoners of war", by intimating
23 that enemy soldiers captured in battle are not priso-
24 ners of war until they have been duly installed in
25

(255. Ex. 15, p. 17 (Tr. 513, not read)
256. Ex. 68, Tr. 684)

257

a regular prisoner-of-war camp . This argument

1 is ludicrous -- an enemy soldier must become a priso-
 2 ner of war the moment he is captured. If he did not,
 3 no one would be responsible for atrocities committed
 4 upon him, since his status as prisoner of war which
 5 alone gives him the right to protection would not
 6 yet have accrued.

7 The domestic law of Japan, in the form of
 8 division of responsibility within the Army itself,
 9 leads to the same conclusion. Commanders of troops
 10 in areas of operations, where prisoners of war are
 11 taken, are responsible in two directions: to the
 12 General Staff in matters operational, to the War Min-
 13 istry in administrative ²⁵⁸ . The troop commander's un-
 14 doubted responsibility for prisoners of war ²⁵⁹ is an
 15 obviously administrative matter, "not connected in any
 16 way with operations", as General TANAKA said, and thus
 17 obviously no concern of the General Staff. This fact
 18 is proved by other circumstances: that the responsi-
 19 bility for construction of prisoners-of-war camps is
 20 in the Minister of War ²⁶⁰ ; that the commanders in
 21 the field communicated concerning prisoners of war
 22 with the War Ministry, through its Prisoners-of-War

24 (257. Testimony of NISHIURA, Tr. 27,693

25 258. Testimony of TANAKA, Ryukichi, Tr. 14,364

259. Testimony of TOJO, Tr. 14,576

260. Testimony of TANAKA, Ryukichi, Tr. 14,286)

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Information Bureau ; and, above all, that the
1 General Staff had no legal officers, such as would
2 have been essential to it had it had any responsi-
3 bility whatever in the matter of prisoners of war²⁶².

4 Additionally, it may be mentioned that the
5 evidence shows that Chief of the General Staff UMEZU
6 first had knowledge of the facts of illegal punish-
7 ment of allied airmen in Japan after the end of the
8 war²⁶³. While ignorance would be no excuse if the
9 duty and the power of controlling the prisoners of
10 war were those of the Chief of the General Staff,
11 in the circumstances it negatives the existence of
12 even a moral responsibility for such illegal actions
13 of the Japanese Army. General UMEZU was Chief of
14 the General Staff during the most critical period of
15 the war, a period of uninterrupted Allied blows and
16 Japanese defeats, and can without strain on the imag-
17 ination be conceived to have been fully occupied with
18 his operational and strategic problems. That circum-
19 stance, and the failure of communications, which has
20 been amply shown by the evidence, are sufficient to
21 account for lack of actual knowledge of atrocities,
22

23 (261 Testimony of TANAKA, Ryukichi, Tr. 14,369

24 262. Testimony of INOUE, Tr. 36,928

25 263. Testimony of INOUE, Tr. 36,927-28, and
SHIMOMURA, Tr. 36,935)

261

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23 (261 Testimony of TANAKA, Ryukichi, Tr. 14,369

24 262. Testimony of INOUE, Tr. 36,928

25 263. Testimony of INOUE, Tr. 36,927-28, and
SHIMOMURA, Tr. 36,935)

1 if there were such, committed by Japanese armies in
2 China.

3 Concerning these atrocities, general summa-
4 tion in connection with which has been made elsewhere,
5 there are several things to be remarked in more specific
6 relation to General UMEZU. First is that the evidence
7 of them--see for example that relating to Kweilin²⁶⁴--is
8 far from being convincing. The commission of atrocities
9 by troops in a zone of operations would be at the
10 responsibility immediately of the commander there,
11 and being a disciplinary--personnel--matter, ultimately
12 of the War Ministry, upon whom devolves the duty of
13 controlling military personnel, not the General Staff.
14 The prosecution, recognizing this, blandly come up
15 with the contention that the General Staff is responsible
16 for War Ministry acts²⁶⁵; but this is of course wholly
17 imaginary responsibility, the Ministry of War being
18 in fact in some ways in administrative matters^{264a}
19 the superior of the General Staff, but the General
20 Staff in no particular the superior of the Ministry.
21 In any event, if there were any vicarious responsibility,
22 by way of respondeat superior, of the Chief of the
23 General Staff for atrocities committed by
24

25 264. Exhibits 350 (Tr. 4,648), 352 (Tr. 4,651 and
353 (Tr. 4,652).

264a. Ex. 74 (Tr. 684).

265. Summation, SY-68(Tr. 42,063).

1 troops in the field, it will be noted that General
2 UMEZU is not shown nor even suggested to have had
3 knowledge of those occurrences, which bears on the
4 questions of his mens rea. Of the atrocities which
5 are charged against him, those at Changsha, which are
6 laid in Count 48 of the Indictment as having taken
7 place (as nearly as it is possible to tell) in June
8 1944, were prior to his assumption of office in the
9 General Staff; those at Hengyang, in Count 49, in
10 early August, when he had just assumed his duties in
11 Tokyo. (Since these offenses are alleged to have
12 occurred "prior to" a given date "and on succeeding
13 days" they are in fact so vague as to charge nothing
14 at all; but we assume that the date mentioned is that
15 intended, although not usually corresponding with
16 much accuracy to the evidence.)

17
18 Section 39. Relatively summary treatment has
19 designedly been given to the period of General UMEZU's
20 service in the General Staff, as well as that with the
21 Kwantung Army. It seems to me that mere common sense --
22 of which much more might profitably be brought to
23 bear on the case than the prosecution are willing to
24 concede -- tells us that the purpose of this Tribunal,
25 and of the Charter creating it, is to discover who
were responsible for such policies of Japan's as

1 were vicious; and that same common sense tells us
2 that it was not intended that a soldier only carry-
3 ing out military duties in war-time should be brand-
4 ed as criminal. I have therefore concentrated the
5 major part of the argument which is justified by the
6 trivial proof in connection with General UMEZU on
7 his activities during the years when Japan's aggres-
8 sive policies are alleged to have been forming. The
9 evidence -- I should say, the lack of evidence -- of
10 his actions as Chief of the General Staff disclose
11 none of that participation in planning for aggression,
12 for deliberate violation of the rights of prisoners
13 of war, for commission of atrocities upon civilian
14 populations, for which at Nuernberg two defendants
15 occupying comparable posts to that of Chief of the
16 Japanese General Staff were hanged. The evidence
17 discloses nothing in regard to General UMEZU's ac-
18 tions as Chief of the General Staff; the one offer
19 by the prosecution to prove any -- the high crime of
20 burning General Staff documents ²⁶⁶ -- has been shown
21 by the uncontradicted evidence to have had neither
22 his knowledge or approval. ²⁶⁷

24 It was mentioned earlier that General UMEZU
25 had not been called to head the General Staff while

(266. Summation, SYY-71, Tr. 42,064

267. Testimony of KAWABE, Torashiro, Tr. 7,683-88)

that body was functioning as the autocrat of the national policy of Japan, but only when it had reverted to its original and proper function of the conduct of warfare, and was in desperate straits to discharge that. General UMEZU was, however, as Chief of the General Staff, a member of the Supreme Council for the Direction of War, and as such participant in the formation of one national policy which is shown by evidence -- the policy of ending the war. As we have seen, he had said when appointed Chief of the General Staff that there was no purpose in further contesting the war, and that it should be ended by diplomatic or other measures²⁶⁸. Thereafter, in Tokyo he expressed the same feeling:

"Of course I have no objection to ending the war; as for the terms of it, however, the country might fall into a most terrible situation, depending on them. Therefore, the war should be brought to its conclusion on the best conditions possible,"

he had said²⁶⁹. As has been testified to by one of his co-defendants, General UMEZU was one of those taking the initiative in bringing about the meetings of the six principal members, of whom he was

(268. Testimony of IKEDA, Tr. 36,943
269. Id., Tr. 36,933)

one, of the Supreme Council for the Direction of
 1 War, with the object of promoting official endeavors
 2 for peace in the only quarter where it was possible
 3 to discuss the question ²⁷⁰. The history of this mat-
 4 ter has been mentioned elsewhere ²⁷¹. Even when the
 5 Potsdam Declaration had at last been accepted, Gen-
 6 eral UMEZU had yet to act to bring about peace, for
 7 there was in the Army a faction of bitter-enders
 8 who proposed carrying out a coup d'etat to permit
 9 of continuing the war. Condemning such an attit-
 10 tude ²⁷², General UMEZU secured the commitment of
 11 all the senior commanders of the Army to an agree-
 12 ment that "The Imperial Army will conduct itself to
 13 the last according to the decision of the Emperor" ²⁷³.
 14 That was on 14 August. Conducting himself to the
 15 last like a soldier, and in accordance with the de-
 16 cision of the Emperor, General UMEZU at 10 a.m. on
 17 2 September 1945 on the battleship MISSOURI appended
 18 his signature to the document which brought to an
 19 end that World War II which he had had no part in the
 20 making of.

22 With this, your Honors, the defense submits
 23 the cause.

- 24 (270. Testimony of TOGO, Tr. 35,782
 25 271. TOGO Summation, §§147-148;
 272. Testimony of IKEDA, Tr. 36,944
 273. Testimony of WAKAMATSU, Tadaichi, Tr. 36,937-38;
 Ex. 3707, Tr. 36,940)

THE PRESIDENT: Mr. Tavenner.

1 MR. TAVENNER: If the Tribunal please, I
2 would like to inquire now if that completes in
3 entirety the defense's reply.

4 THE PRESIDENT: We have been told repeatedly
5 that it does. You have a reply I understand, Mr.
6 Tavenner.

7 We will recess for fifteen minutes.

8 (Whereupon, at 1445, a recess was
9 taken until 1500, after which the proceed-
10 ings were resumed as follows:)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Tavenner.

4 MR. TAVENNER: If the Tribunal please, not-
5 withstanding the fact that defense counsel rather
6 criticized me severely a moment ago for questioning his
7 decision or his announcement that there would be nothing
8 further from the defense, I am now advised by at least
9 one defense counsel that there is some question in
10 mind about further reply.

11 THE PRESIDENT: It can only be by leave, and
12 there is no application.

13 MR. TAVENNER: And, therefore, I desire to
14 know with certainty at this time whether or not the
15 defense has completed its reply.

16 THE PRESIDENT: I am quite sure every Member
17 of the Court has determined that there shall be no
18 further reply after you have given yours. I can say
19 no more than that, Mr. Tavenner.

20 MR. TAVENNER: Yes, sir.

21 Then, having heard nothing further from the
22 defense regarding their desire for a reply, I will
23 proceed.

24 May it please the Tribunal:

25 The prosecution is of the opinion that it would

1 be of assistance to the Tribunal if a reply were made
2 to certain contentions made by the defense in the sum-
3 mations which have just been concluded. In the prepa-
4 ration of that reply an effort has been made to deal
5 only with important and material matters and to meet
6 them with brevity and conciseness.

7 With the permission of the Tribunal that reply
8 will be made in three parts as it appeared that what
9 has been prepared falls conveniently into three classi-
10 fications.

11 The first part, which will be presented by
12 the U.S.S.R. Division, will deal with those matters
13 arising out of the U.S.S.R. General Summation presented
14 by the defense and which in our opinion require reply.

15 The second part, which will be presented by
16 the Chinese Division, will answer the contention of the
17 accused DOHIHARA and ITAGAKI who have been shown by the
18 evidence to have been prominent as instigators and
19 active participants in the aggressive action taken by
20 Japan in Manchuria in 1931 and which later spread to
21 other parts of China.

22 The third part will consist of the comprehen-
23 sive reply of the prosecution made in answer to the
24 general propositions laid down by the defense both in
25 the general summations and in the argument on the law.

1 This part will also contain appropriate references to
2 pertinent points arising out of the individual defense
3 summations.

4 As distribution of the whole of the prosecution
5 reply has not yet been made, the prosecution desires
6 to inform the Tribunal that it is anticipated that
7 the argument will be concluded in approximately one
8 and one-half days.

9 Major General A. N. Vasiliev, of the Russian
10 Division, will now present Part I.

11 THE PRESIDENT: General Vasiliev.

12 GENERAL VASILIEV: (Reading)

13 Prosecution's Reply to the Defense Summation
14 on the Section of the Indictment "Japan's Aggression
15 Against the U.S.S.R.

16 The principal thesis advanced by the defense
17 in regard to this section amounts to this: Throughout
18 the period covered by the Indictment, Japan did not
19 wage war against the U.S.S.R. and Japan's acts vis-a-vis
20 the U.S.S.R. with which the accused are charged do not
21 come, in their submission, within the jurisdiction of
22 the Tribunal.

23 " * * such Soviet charges of initiating or
24 waging war as are made must fall to the ground, not being
25 within the jurisdiction of the Tribunal as limited by

1 its Charter, and the charges of planning and preparing
2 war or conspiring thereto alone survive.

3 * * It is war which this Charter makes punish-
4 able -- not the harboring of aggressive intention, not
5 fighting in the form of border incidents, not the pre-
6 paration of war plans; war, or conspiracy to commit it,
7 aggressive or in violation of international law."
8 (T. 42,697-8)

9 We have deliberately quoted such a lengthy
10 passage from the summation by Defense Counsel Blakeney
11 and Furness in order to clearly demonstrate the chicanery
12 of such reasoning.

13 The language of Article 5 (Item "A") of the
14 Charter is abundantly clear:

15 "The following acts, or any of them, are crimes
16 coming within the jurisdiction of the Tribunal ** the
17 planning, preparation, initiation or waging of a declared
18 or undeclared war of aggression * *"

19 Consequently, the defense have no right to
20 cast any doubt in a direct or disguised manner upon the
21 question of criminality of the preparation or planning
22 of a war of aggression.

23 Under Count 17 of the Indictment the accused
24 are charged with having "planned and prepared a war of
25 aggression * * against the Union of Soviet Socialist

Republics."

1 The evidence adduced by the prosecution has
2 proved beyond any doubt that the accused "planned and
3 prepared" a war of aggression against the U.S.S.R. It
4 falls within the terms of the Charter and, consequently,
5 it undoubtedly comes within the Tribunal's jurisdiction.

6 Aggressive intentions which, as the prosecution
7 proved, the Japanese ruling clique harbored toward the
8 U.S.S.R. are doubtless important elements in the planning
9 or preparation of a war of aggression; they show the
10 aggressive nature of the war which was being prepared.

11 Such organizations as the Kokusaku Kenkyukai
12 Society and the Total Warfare Institute laid a "theo-
13 retical" foundation for the seizure of Soviet territo-
14 ries pursuant to instructions of the Japanese Government.
15 In 1933 War Minister ARAKI preached at a conference of
16 governors that
17

18 " . . . Japan was to inevitably clash with
19 the Soviet Union in the course of the effectuation of
20 her policy, therefore it was necessary for Japan to
21 secure for herself through military methods the terri-
22 tories of the Maritime Province, Zabaikalye and
23 Siberia" (Ex. 3371); in January 1932 in his address made
24 in the palace in the presence of the Emperor, ARAKI's
25 predecessor War Minister MINAMI formulated the objective

1 "to make the Sea of Japan into a lake" (Ex. 2251) which
2 clearly envisaged the capture of the Soviet Maritime
3 Province; furthermore, soon thereafter these Japanese
4 societies and institutions as well as some others mapped
5 out practical steps connected with the objectives in a
6 war against the U.S.S.R.; special propaganda was being
7 disseminated; and the plans drafted by the Japanese
8 General Staff and by the Kwantung Army Headquarters were
9 not abstract or of a general nature, but they were plans
10 of offensive operations for the attainment of the
11 strategic military objectives of a war of aggression
12 against the U.S.S.R.

13 It was the drafting of precisely such plans
14 that the prosecution was proving and, we submit, has
15 sufficiently proven.

16 Further we will show how the defense, contrary
17 to facts, attempted to present such plans as routine
18 plans customarily marked out by General Staffs "against
19 any eventualities" and what came of such attempts.

20 Are the above facts not essential elements in
21 the planning and preparation of a war of aggression?

22 Does it not amount to the planning and prepa-
23 ration of a war of aggression?

24 How can one say in view of such facts that the
25 working out of such plans does not come within the

Tribunal's jurisdiction?

1 Reference will be made further to the fact
2 that the events at Lake Khassan and at the Khalkir-Gol
3 River represented undeclared wars of aggression and
4 not "fighting in the form of border incidents" (T. 42,698)
5 as the defense named them. In this connection it should
6 be noted that these events not only have an independent
7 significance, as far as the question of jurisdiction is
8 concerned, as undeclared aggressive wars (therefore,
9 Counts 25, 26, 35, 36, 51 and 52 of the Indictment are
10 devoted to them) but should also be regarded as elements
11 and stages of the preparation of a large-scale aggressive
12 war against the U.S.S.R. and, consequently, in this
13 meaning, they also come within the purview of the Tribunal.
14

15 In its summation the prosecution proved at
16 length by numerous weighty documents that the Japanese
17 ruling clique had not fully executed its plans of an
18 aggressive war against the U.S.S.R. and in this sense,
19 as the defense contends, "did not wage war," since the
20 favorable moment, the most advantageous situation they
21 had been waiting for, had never presented itself.
22 However, Japan was most actively engaged in military
23 preparations for a war of aggression against the U.S.S.R.
24 and made attempts to initiate this war but, encountering
25 resistance, was compelled to postpone the execution of

1 her plans for the future; she entered into an inter-
2 national conspiracy against the U.S.S.R. and actively
3 aided Hitlerite Germany in her aggressive war against
4 the U.S.S.R., i.e., virtually participated in this war.

5 Japan's plans of a war of aggression against
6 the U.S.S.R. were not fully executed and the favorable
7 situation the Japanese imperialists waited for did not
8 present itself, for the Soviet Union being under a con-
9 stant threat of attack had to divert immense manpower
10 from peaceful labor and construction for the purpose
11 of her defense, and subsequently having taken an active
12 part in the struggle of the Allied Nations against
13 imperialistic Japan frustrated the plans of the aggres-
14 sors.

15 These actions of the Japanese ruling clique to-
16 ward the U.S.S.R., we repeat again, constitute in them-
17 selves under the Charter the complete corpus delicti of
18 a crime against peace.

19 Is it not clear that if bandits formed a gang,
20 agreed to make a hold-up, worked out a plan of action,
21 obtained weapons, made a number of futile attempts and
22 later in the course of further preparations were appre-
23 hended by the authorities and disarmed, the failure to
24 fully execute their criminal intent does not free the
25 gangsters from their responsibility?

1 In this connection, the prosecution calls the
2 Tribunal's attention to the fact that the planning and
3 preparation for a war of aggression against the U.S.S.R.
4 was part of the over-all plan of aggressive conspiracy
5 against the freedom-loving peoples and one of the most
6 essential elements of this plan, the execution of one
7 part of which was followed by open hostilities and the
8 execution of the other part of it, in the case of the
9 U.S.S.R., had another form, not less dangerous and actual,
10 as described above.

11 In this sense the plan of Japanese aggression
12 was not fully carried out in all its parts, including
13 those against China, the U.S.A., Great Britain and
14 other nations, even despite the fact of Japan's open
15 hostilities, because owing to the heroic resistance of
16 the Chinese people and the successful conduct of war by
17 the Allied Nations, Japan failed to achieve her contem-
18 plated objective in the war; likewise, she fell short
19 of realizing her plans of aggression vis-a-vis the
20 U.S.S.R. due to the vigilance of the U.S.S.R. and the
21 heroic struggle of the Soviet Army. Commencing their
22 summation on the Russian Phase with an attack on the
23 Tribunal's jurisdiction, the defense concluded it with
24 the following assertion:
25

" . . . the evidence has shown that Japan was

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2 Tribunal's attention to the fact that the planning and
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21 heroic struggle of the Soviet Army. Commencing their
22 summation on the Russian Phase with an attack on the
23 Tribunal's jurisdiction, the defense concluded it with
24 the following assertion:
25

" . . . the evidence has shown that Japan was

1 motivated always by a genuine fear, well-founded or
2 otherwise, of Soviet power; and that the nature and
3 extent of those Japanese military preparations demon-
4 strates them conclusively to have been those of defense,
5 not of aggression." What "evidence has shown" that?

6 The Soviet prosecution has strictly complied
7 with the established rule that each assertion should be
8 based on the evidence admitted by the Tribunal and it
9 has a lawful right to demand that the defense likewise
10 abide by this rule.

11 However, the summation for the defense abounds
12 in unsupported statements based on no evidence,
13 references to materials either never presented to the
14 Tribunal or rejected by it, attempts at a distorted
15 interpretation of facts which the Tribunal has regarded
16 irrelevant and which, therefore, have not been subjected
17 to this inquiry.

18 Such, in particular, is the foregoing conclusion
19 of the defense summation. What evidence is implied
20 which allegedly proves that Japan was under a threat
21 of aggression by the Soviet Union?

22 It is laughable to refer in support of this
23 allegation to the success of the five-year plans in the
24 U.S.S.R. which, as it is commonly known, served the
25 purpose of the economic and cultural development of the

country (T. 43,238-9).

1 It is laughable and, plainly speaking, not
2 clever to regard as evidence notes of a foreign corres-
3 pondent on his impressions of the parade on the Red
4 Square in Moscow on 7 November 1935 (T. 43,232-3).

5 It is ridiculous to quote as evidence irrespon-
6 sible hints at "the fate of those states along the
7 western border of the Soviet Union" (T. 42,718), despite
8 the fact that previously the Tribunal has flatly rejected
9 the "evidence" presented by the defense and ruled not
10 to touch upon this matter at all (T. 17,635). If it
11 had not been for this ruling of the Tribunal which, we
12 felt, it was our duty strictly to comply with, but which
13 the defense has obviously ignored, the prosecution would
14 have offered enough evidence to demonstrate the slan-
15 derous nature of such statements as made by the defense
16 and would have shown that the actions of the Soviet
17 Union in 1939-1940, to which the defense apparently
18 referred, prevented Poland, Esthonia, Latvia and Lithuania
19 from being turned into enslaved colonies of Hitlerite
20 Germany, ensured the possibility of a free development
21 of these countries and contributed to the struggle
22 against the Fascist aggression in the interests of not
23 only the U.S.S.R. but also of the whole world, including
24 the peoples of the U.S.A. and Great Britain.
25

1 MR. FURNESS: Are the same limitations to be
2 imposed upon the prosecution on their summations as were
3 imposed on the defense? I notice references to slan-
4 derous statements, various stigmatizing of the defense.

5 THE PRESIDENT: The Russian prosecutor shall
6 be allowed to put his summation without interruption.

7 GENERAL VASILIEV: (Continuing)

8 Since the defense has been unable to furnish
9 any evidence to prove the non-existent threat of
10 aggression against Japan, Japan's large-scale prepara-
11 tions for a war against the U.S.S.R. are a fact too
12 obvious to be disputed, the defense tries to pass off as
13 evidence the very allegation it seeks to prove.

14 The defense witnesses, former Japanese cabinet
15 members, generals, admirals, diplomats, etc., i.e.,
16 closest henchmen and accomplices of the accused in their
17 gravest crimes against peace, testify one after another,
18 that "the measures taken by Japan were of a defensive
19 nature."
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1 The defense supposes that its job is done,
2 the "evidence" has been offered. The prosecution
3 has presented a huge amount of factual materials
4 and, in particular, a series of Japanese documents
5 wherein Japan's aggressive intent toward the USSR
6 as well as practical action along these lines were
7 clearly set out. Among such documents presented to
8 the Tribunal are documents of Japan's Kokusaku-
9 Kenkyukai Society and Total Warfare Institute (Ex.
10 682-685, 688, 3372, 689, 690 and others), HIROTA's
11 proposals to the Japanese General Staff (Ex. 692,693),
12 KASAHARA's report (Ex. 2671), the letter from
13 SHIRATORI to ARITA (Ex. 774), KATABE's report (Ex.
14 701), KANDA's plan (Ex. 698, 3852), HASHIMOTO's
15 report (Ex. 734-A), instructions of the Japanese
16 General Staff and materials of conference on sub-
17 versive activities against the USSR (Ex. 732-A,
18 736-A, 737, 738, 740, 2409, 2436, 3701) and many other
19 Japanese official documents whose enumeration would
20 have taken too much space here. All this has been
21 stated in detail in the prosecution's summation.

22 The prosecution has presented the results
23 of a thorough analysis of Japan's war preparations
24 against the USSR in Manchuria and Korea; this
25 analysis was conducted by competent authorities on

1 the spot upon the liberation of Manchuria and Korea
2 from Japanese aggressors by the Soviet Army (Ex.
3 706-718; 724-729).

4 Lastly, the prosecution has introduced a
5 number of Japanese witnesses and among them some
6 former generals of the Japanese Army who had enough
7 courage to confirm facts.

8 To contradict the prosecution documents, the
9 defense has offered general reasoning as to the "type
10 of prosecution evidence" and, in doing so, concen-
11 trated its fire on the testimony of Japanese wit-
12 nesses being well aware of the part to be played by
13 the testimony of Japanese generals and officers of
14 the General Staff and the Kwantung Army Headquarters,
15 as well as top-ranking civil servants (TAKABE, Chief
16 of the General Affairs Department, Manchukuo) who
17 here before the International Tribunal laid down on
18 the table the cards of the Japanese militarists, told
19 the truth about the facts showing Japan's ruling
20 clique to have been engaged in aggression against
21 the USSR.

22 Being unable to refute this testimony, the
23 defense declared that these witnesses being POW's in
24 the USSR "were led or compelled to testify. . ."
25 (T. 42708). What are the reasons which may justify

the defense in leveling such a slanderous allegation?

1 All the five Japanese witnesses who testified
2 in person before the Tribunal (MATSUMURA, Tomokatsu
3 (T. 8138-55); SHJIMA, Ryuzo (T. 8093-8126); TAKABE,
4 Bokuzo (T. 31824-31, 931); MATSUURA, Kusuo (T.31932-
5 96); MURAKAMI, Kaysaku (T. 31996-32, 068) did not
6 present the slightest semblance of anything in the
7 nature of duress although the defense by direct and
8 leading questions tried by all means to put into their
9 mouths a reply desirable to the defense.
10

11 When during the discussion of the question
12 of the presentation of Japanese witnesses for cross-
13 examination, Defense Counsel Blakeney made such an
14 improper attack, the Tribunal ruled as follows:

15 "There is no evidence justifying Major
16 Blakeney's suggestion at page 23791 of the transcript
17 that duress was employed to secure the evidence. The
18 Tribunal issued and repeats its warning against such
19 unwarranted assertions by counsel." (T. 24518).
20

21 How can the defense in view of this reiterate
22 these slanderous allegations?

23 The defense moves to regard as having no
24 probative value the testimony of the prosecution
25 witnesses MIYAKE, KUSABA, KITA, and NOHARA (all of
them Japanese) (T. 42709) whose affidavits were

1 admitted by the Tribunal without summoning the wit-
2 nesses for cross-examination. With the exception of
3 some ambiguous reasoning on the meaning of certain
4 legal terms, the defense failed to give any reasons
5 for its motion to regard as rejected just to please
6 the defense the affidavits which had been fully argued
7 before they were admitted by the Tribunal.

8 The prosecution calls the Tribunal's atten-
9 tion to the fact that the testimony of the witnesses
10 MIYAKE, KUSABA, KITA and NOHARA is corroborated by
11 the testimony of other witnesses as well as by docu-
12 ments and, therefore, there is no room for doubt as
13 to the veracity of their testimony.

14 The prosecution has previously dwelt upon
15 this matter in detail, and there is no need to reit-
16 erate it. (T. 23806-825).

17 The defense in their summation made strenuous
18 efforts to distort generally known facts bearing upon
19 the historic relations of Japan and the Soviet Union,
20 former Russia -- Japan's attack without any declara-
21 tion of war on the Russian fleet in Port Arthur in
22 1904 and the Japanese intervention in the Soviet Far
23 East in 1918-22. The defense were deterred neither
24 by the prosecution mentioning these generally known
25 facts merely as a historic background clarifying the

1 subsequent events taking place in the period covered
2 by the Indictment, nor by the Tribunal's decision to
3 disregard defense documents dealing with those matters
4 (T. 38201; 38222) and on that ground to reject prosecu-
5 tion's rebuttal documents which would undoubtedly have
6 given the correct exposition of facts from a historic
7 point of view.

8 The defense have found a curious way out:
9 They do not refer to the documents which they previously
10 presented as the Tribunal decided to disregard them,
11 but they quote at length about the Russo-Japanese war
12 from the books by Lawrence and Wheaton (T. 42701;
13 42706) which were not offered in evidence to the
14 Tribunal. These excerpts deal not with legal, but
15 with factual matters and contain the opinions of the
16 authors which have no value for the Tribunal and can-
17 not be utilized on formal grounds as they were not
18 received in evidence by the Tribunal. It is signifi-
19 cant that all the statements made by the defense on
20 that subject based on the aforesaid books as well as
21 on the exposition of facts taken from unknown sources
22 and on defense attorneys' own conclusions amount to
23 the justification of an attack without a declaration
24 of war not denying the fact in substance. Not desiring
25 to violate the established rules of procedure we do

1 not propose to refer to any authors (though we could
2 contrast two books referred to by the defense with
3 two dozen books proving our point of view), but merely
4 appeal to logic: if the result of the negotiations
5 between Russia and Japan prior to the attack meant a
6 declaration of war, as the defense intend to prove
7 now, why should the Emperor of Japan on February 10,
8 1904, i. e., two days after the attack, promulgate an
9 ordinance about the "Declaration of War," the first
10 lines of which read as follows: "We hereby declare
11 war on Russia" and further not to say a word about
12 the hostilities which had already commenced? We do
13 not deem it necessary to argue with the defense about
14 the Japanese intervention in the Soviet Far East in
15 1918-22. The aggressive character of the Japanese
16 intervention is so obvious to the whole world that
17 there is no need to refute the unfounded allegations
18 of the defense. The defense alleging that those facts
19 were irrelevant to the issues involved in the case
20 and therefore required no argument gave themselves away
21 when they embarked upon a long dissertation with regard
22 to these facts, confirming thereby their importance
23 for the understanding of the subsequent actions of
24 the Japanese imperialists against the USSR.
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As it was to be expected, one of the main

points in defense summation is a denial of the conspiracy of aggression of imperialist Japan with Hitlerite Germany and Fascist Italy against the USSR. Following in general the line of groundless denials of facts and futile attempts of casting reflection upon the evidence offered by the prosecution, the defense undertook some new maneuvers worthy of attention. The defense admitted that the so-called Anti-Comintern Pact as directed against the USSR. Defense Counsel Cunningham said:

"There is no contest about the Pact being directed against the Soviet Union. . ." (T. 42952).

More than that the same defense counsel added:

"We have no apologies to make for the Anti-Comintern Pact." (T. 42954).

It follows from this that the accused admit that in 1936 they concluded an alliance with Hitlerite Germany and Fascist Italy for joint actions against the USSR, do not regret this at all and are ready to be fully responsible for this. This is very important for the Tribunal. The defense themselves offered in evidence the statement of the Japanese Ministry of Foreign Affairs of November 25, 1936 in which the following is said about the Anti-Comintern Pact:

1 ". . . the present agreement is not directed
2 against the Soviet Union. . ." (Ex. 2371).

3 It means that the facts were proved so con-
4 clusively that it became quite impossible to deny
5 them.

6 Making the aforesaid confession, the defense
7 counsel started upon a discourse about the USSR and
8 the Comintern trying to find in it the justification
9 of Japan's actions. However, the Tribunal heard
10 nothing but old, trivial fairy-tales which were
11 either the fruits of the imagination of their authors
12 or groundless statements of the accused and other
13 members of the Japanese ruling clique (HIROTA, ARITA,
14 HAYASHI and others) responsible for the so-called
15 Anti-Comintern Pact and naturally trying to show the
16 alliance for aggression as a "defense" against com-
17 munism (T. 42963-4). Consequently, the Tribunal
18 should deal with this explanation of the actions of
19 the Japanese ruling clique as to the conclusion of
20 the so-called Anti-Comintern Pact with Hitlerite
21 Germany and Fascist Italy, in the same way as any
22 other court would deal with an attempt of a robber
23 to justify an armed attack, calling it "self-defense"
24 in view of the expected resistance on the part of
25 the victim.

The defense say:

1 "All of the contentions of the prosecution
2 on the effect of the Anti-Comintern Pact are errone-
3 ous." (T. 42953).

4 Thus, anticipating in advance that it would
5 be impossible for them, wish as they might, to repre-
6 sent the so-called Anti-Comintern Pact as a valid
7 means of international cooperation, the defense try to
8 find a loophole asserting that the pact had no serious
9 consequences. And what should be done with the facts
10 (proved by the prosecution) of the aggressive actions
11 of the signatories of the so-called Anti-Comintern Pact
12 undertaken on the basis of that alliance?
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14 The defense say:

15 "It is correct from the retrospect that the
16 tie created by the Anti-Comintern Pact between Japan
17 and Germany influenced the Japanese foreign policy
18 afterwards. But the question is whether at the time
19 of the conclusion of the Anti-Comintern Pact the future
20 of the Japanese-German relations was foreseen and
21 decided upon.

22 The answer to the question is a definite "no."
23 (T. 43026).

24 But HIRANUMA replied "Yes" when he wrote to
25 Hitler on May 4, 1939 that:

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25 Hitler on May 4, 1939 that:

"... it was a confirmed joy to me how
effective the Anti-Comintern Agreement between our
two countries proves itself in the execution of
tasks placed before them." (Ex. 503).

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1 HIRANUMA knows better because he in his
2 capacity as President of the Privy Council
3 approved of the conclusion of the so-called Anti-
4 Comintern Pact. The defense, contrary to the facts,
5 continue to deny that the Tripartite Pact was directed
6 against the U.S.S.R. They say: The negotiations
7 in 1938 and 1939 between Germany and Japan about the
8 conclusion of a closer alliance, or as the defense
9 themselves call it, "strengthening of the Anti-
10 Comintern Pact," were really conducted and aimed
11 at the joint actions against the U.S.S.R. (Tr. 42,969-
12 971), but that the Pact was concluded for some other
13 purpose which allegedly had no bearing upon the
14 U.S.S.R. (Tr. 42,969). That is logically preposterous.
15 The negotiations about the conclusion of the Pact
16 were conducted over the period of two to three years,
17 the only point of controversy being whether the Soviet
18 Union alone should be the object of joint actions of
19 Hitlerite Germany, Fascist Italy and imperialist
20 Japan, as most of the members of the Japanese ruling
21 clique insisted, or other countries as well, as was
22 proposed by Hitler. Then the Pact was concluded and
23 at once it happened that it was not directed against
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2 concluded a non-aggression Pact with the U.S.S.R. in
3 August 1939, thereby committing an act of "treason"
4 against Japan. "The conclusion of the German-Russian
5 Non-Aggression Pact . . .," say the defense, "came as
6 a complete surprise to Japan" (Tr. 42,973), and caused
7 the adoption of the reorientation program (Tr. 42,975).
8 But the groundlessness of the defense contentions is
9 shown by the evidence presented by the defense itself,
10 in particular by the affidavit of the defense witness
11 Stahmer in which he says that Ribbentrop as early as
12 April 1939 confidentially informed Japanese Ambass-
13 adors OSHIMA and SHIRATORI that Germany might conclude
14 a non-aggression pact with the U.S.S.R. (Tr. 24,399).
15 Is it not clear from Ribbentrop's conversation with
16 MATSUOKA on March 27, 1941 that Japan in the person
17 of her Ambassador OSHIMA was aware of the real inten-
18 tions of Germany with regard to the conclusion of the
19 non-aggression pact with the Soviet Union (Ex. 783)?
20 So there was no "treason" whatsoever.

21 Secondly, say the defense, Article 5 of the
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1 existing political relation between each or any one
2 of the signatories with the Soviet Union" (Tr. 42,984).
3 The defense pass over in silence the documents pre-
4 sented by the prosecution, for instance, record of
5 the meeting of the Investigation Committee of the
6 Privy Council of September 26, 1940 at which MATSUOKA
7 in a rather outspoken manner said about that clause 5:

8 " . . . Japan will aid Germany in the event
9 of a Soviet-German war, and Germany will assist
10 Japan in the event of a Russo-Japanese war" (Ex.
11 552, p. 7).

12 We also have not heard anything from the
13 defense about another prosecution document, a secret
14 telegram of KURUSU, the Japanese Ambassador in Berlin,
15 of September 26, 1940 to Tokyo, in which KURUSU reports
16 that the German Government plans to guide the German
17 press to lay particular emphasis on the fact that the
18 treaty does not mean anticipation of war with Russia.
19 "But, on the other hand, Germany is concentrating
20 troops in the Eastern regions as a check on Russia."
21 (Ex. 786-A)

22 The defense deliberately do not mention that
23 according to the decision of the Imperial Conference
24 of July 2, 1941, it was under the Tripartite Pact
25 that Japan considered herself to be under obligation

1 to take the side of Germany against the U.S.S.R.
2 ("Though the spirit of the Tripartite axis will
3 form the keynote of our attitude toward the German-
4 Soviet war, we shall not intervene for a while. . ."
5 (Ex. 779)) and did not do that only because, having
6 made a thorough preparation, Japan did not consider
7 the situation favorable for an easy victory. The
8 contention of the defense based on the aforesaid two
9 assertions that the Tripartite Pact allegedly was not
10 directed against the U.S.S.R. is a broken reed. It
11 is below criticism. Defense Counsel Cunningham, in
12 his Summation dealing with the international alliance
13 of aggressors against the U.S.S.R., complained that
14 the prosecution Summation on the Russian phase did
15 not come in sufficient time and therefore the defense
16 could only undertake a brief answer (Tr. 43,031).
17 By way of informing the Tribunal, we may say that
18 the Summation dealing with aggression against the
19 Soviet Union was delivered on February 17-18, and
20 Mr. Cunningham delivered his Summation on March 9-10.
21 Who can agree that the defense had little time for
22 composing their argument? Not that this accounts
23 for the weakness of the defense argument, but that
24 they are unable to disprove the facts.
25

The defense has twice turned to the subject

1 to take the side of Germany against the U.S.S.R.
2 ("Though the spirit of the Tripartite axis will
3 form the keynote of our attitude toward the German-
4 Soviet war, we shall not intervene for a while. . ."
5 (Ex. 779)) and did not do that only because, having
6 made a thorough preparation, Japan did not consider
7 the situation favorable for an easy victory. The
8 contention of the defense based on the aforesaid two
9 assertions that the Tripartite Pact allegedly was not
10 directed against the U.S.S.R. is a broken reed. It
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1 of undeclared wars of aggression at Lake Khassan
2 and at the Khalhin-Gol River; in the Summation on
3 the Indictment by Defense Counsel Yamaoka and in
4 the Summation by Defense Counsel Blakenev and
5 Furness on our phase; the latter counsel devoted
6 to these events almost two-thirds of their Summation
7 which apparently shows the recognition by the defense
8 of the importance of these facts for exposing the
9 criminals against peace.

10 It is characteristic that the defense has
11 been compelled to considerably retreat from the
12 position they attempted to hold in course of the
13 proceedings. Whereas previously the defense contend-
14 ed that it was Japan who allegedly defended herself
15 against the Soviet Union (Tr. 22,418-19), in the
16 Summation the defense stated that both parties were
17 honestly under misapprehension, "that the borders were
18 in dispute, that there was no aggressive intent, 'no
19 encroachment by one nation on the territory of
20 another with the view of retaining this territory.'"
21 It is very much in the nature of a compromise proposal
22 which we, of course, categorically reject. The
23 prosecution evidence proves beyond doubt that the
24 Japanese military had prepared these military opera-
25 ~~tions in advance and were the first to open hostilities.~~

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As to the Lake Khassan events, it is necessary
1 to specifically determine whether it was the Soviet
2 Union which was right in its contention that the
3 border ran on the tops of the hills lying west of the
4 lake and that consequently, it was the Soviet Union
5 to which the territory between the west bank of the
6 lake and the tops of the hills belonged, or whether
7 it was Japan which was right in contending that the
8 border ran directly along the bank and that, conse-
9 quently, the aforementioned sector of the territory
10 belonged to Manchuria.
11

12 The fact that this is what the formal aspect
13 of the conflict amounted to, the aspect which served
14 as a pretext for hostilities has never been disputed
15 by the defense. (Tr. 42,757).
16

17 There can only be one opinion about this: when
18 there is an agreement of two nations relative to the
19 location of the boundary, it is precisely this agree-
20 ment that settles the issue. We have to refer to
21 such elementary things for the reason that, while
22 fomenting the conflict, the accused SHIGEMITSU
23 declined such approach to the solution of the border
24 issue though it appeared quite natural and simple
25 (Tr. 7763). As we shall show later in detail, the
defense are inclined to pay as little attention as

possible to the relevant consideration of documents
1 rather preferring to rely upon the unfounded state-
2 ments of their witnesses and upon abstract reasoning.
3 In this case, the Hunchun protocol of 1886 concluded
4 between China and Russia and the map attached thereto
5 are available for the determination of the boundary
6 at Lake Khassan (Ex. 753, 2175).

7 Do the defense challenge this protocol? No,
8 they do not. On the contrary, the defense themselves
9 have presented a document from which it may be seen
10 that the Chinese Government considers this protocol
11 as having full official validity. (Ex. 3545-C). Have
12 the defense offered any other documents to refute this
13 protocol? No, they have not.

14 The differences commence with the interpreta-
15 tion of the contents of the Hunchun protocol. The
16 Tribunal can straighten out this matter with mathemat-
17 ical precision.

18 The Protocol was written in Russian and
19 Chinese. We have presented to the Tribunal the Russian
20 text in its entirety in the form of a photostatic copy
21 of the original. (Ex. 2175) The Russian version of
22 this Protocol relative to the sector of the border in
23 question, stating that the boundary runs "following
24 the line of the mountains, west side of Lake Khassan"
25

(Ex. 753), leaves no room for doubt as to the location of the border on the mountains situated on the west side of Lake Khassan; otherwise, under the rules of the Russian language, the wording would have been "on the bank of Lake Khassan."

The defense have contrasted the Russian version with the Chinese text. Before stating the results of it, we must emphasize that the defense have presented not the original text and not a photostat of the original text, and not even a copy of the Chinese text of the Protocol certified by a governmental agency, but merely the contents of this Protocol taken from a book, without the map, for the map was not included by the publisher in this compilation. Attention is incidentally invited to the fact that the book was published by a private publishing company in Shanghai.

In the text of the Protocol offered by the defense, reference is made to the map attached thereto, but why it was not published in this book - we do not know (Ex. 3545-C, Tr. 34,498; Tr. 34,507). This copy cannot be regarded as identical to the original Protocol and, at all events, under such conditions, preference should be given to the original text we have presented.

1 The defense contend that the similar portion
2 of the Chinese text relevant to the border at Lake
3 Khassan can be understood in a different sense, i.e.,
4 to mean that the border runs directly on the western
5 bank. However, reference is made to the fact which
6 the Defense would not refuse to admit, that both in
7 the Chinese text and in the English translation thereof,
8 it is not the word "bank" but the word "side" that is
9 used, a word which has a broader sense. If the border
10 had passed on the bank, nothing would have been easier
11 than to use the simple and clear word "bank", which
12 apparently exists in any language.

13 Consequently, any discrepancies between the
14 Russian and Chinese texts of the Hunchun Protocol
15 can only be artificially invented, as it is done by
16 the defense.

17 The Tribunal's attention is called to the deci-
18 sive argument, i.e., to the map attached to the Hunchun
19 Protocol (Ex. 753, 2175).

20 A mere glance at this map shows that the border
21 runs on the tops of the hills situated on the west side
22 of Lake Khassan. Consequently, as to the location of
23 the border at Lake Khassan, it was the Soviet Union
24 which was undoubtedly right. This is shown by
25 historical documents. No other conclusion can be

arrived at. The defense realize that whereas on
1 the subject of the text of the Protocol, one could
2 pile up several pages of abstract reasoning, making
3 use of language differences, the map does not offer
4 such opportunities. A map has the same meaning in
5 any language. A lake is a lake, a mountain is a
6 mountain, and a clearly marked border line is
7 a border line, and it runs on the tops of the moun-
8 tains located on the west side of the lake, and not
9 on the bank.

10
11 Bearing it in mind, the defense calls this
12 map a "Russian" map in an attempt to show that this
13 is a document of only one of the signatories of the
14 Protocol - Russia (Tr. 42,737). We do not ask that
15 our word be taken for it. If your Honors take a
16 look at this map (Ex. 753, 2175), you will see that
17 this is not a "Russian" map. It is the original map
18 attached to the Hunchun Protocol, bearing inscriptions
19 in Russian and Chinese and signed by representatives
20 of the Russian and Chinese Governments. This map is
21 just as Russian as it is Chinese, this is a bilateral
22 map. No one has ever said a word impeaching this
23 document.

24
25 Lastly, the defense set forth its final
argument to the effect that one should be guided not

by a map but by "the explicit text of the agreement."

1 (Tr. 42,737)

2 As the phrase goes, they changed their tune.
3 At first, the defense tried to prove that the text of
4 the Protocol was ambiguous and therefore, both parties
5 were under misapprehension, and now they contend that
6 the text is clear and one should be guided by this
7 text alone.

8 The Tribunal will see that there is no contra-
9 diction between the text of the Hunchun Protocol and
10 the map, and that the general reference contained in
11 the Protocol to the border passing "following the line
12 of the mountains west side of Lake Khassan," is
13 manifestly demonstrated on the map, leaving absolutely
14 no room for doubt as to the location of the border on
15 the terrain in conformity with the Soviet contention,
16 i.e., on the tops of the hills located west of Lake
17 Khassan.

18
19 Equally indisputable is the prosecution's
20 documentary evidence defining the boundary in the
21 Khalhin-Gol River area. The defense attempted to do
22 away with this evidence by the hardly convincing
23 statement to the effect that "On the dozens of maps
24 introduced into evidence we shall, then, say only
25 enough to make clear our submission that in the

1 pre-Nomonhan days no one knew where the state boundary
2 in that area was and that it is impossible for this
3 Tribunal to determine it." (Tr. 42,762-3)

4 This statement proves that the defense have
5 obviously failed to substantiate with maps the right
6 of the Japanese side and have given up this attempt.
7 We have not given up, using maps in order to substan-
8 tiate our position, and we believe that this is the
9 only correct way.

10 First of all, we should determine which of
11 the "dozens of maps" presented by the parties are
12 credible and most convincing evidence. Since the
13 Mongolian People's Republic previously was a part
14 of China, priority should certainly be given to the
15 Chinese maps. One can assume that the defense agrees
16 with this as a matter of principle. (Tr. 22,419)
17 Naturally, the Chinese maps which may serve as a basis
18 for the determination of the border should be either
19 official publications, or, at all events, they should
20 emanate from official and reliable sources.

21 The prosecution has offered in evidence two
22 such official Chinese maps, both of them being
23 published long before the outbreak of hostilities
24 in the Khalhin-Gol River area. Both maps were
25

1 received in evidence. One of these maps was published
2 in 1919 by Directorate-General of Posts in Peking.
3 (Ex. 763) On this map the border is clearly marked
4 east of the Khalhin-Gol River, i.e., in full conform-
5 ity with the Soviet-Mongolian contention.

6 Even such a prejudiced defense witness as
7 the former Japanese Intelligence Officer YANO, Mitsuji,
8 was unable to deny the official character and defin-
9 itiveness of the border line as it appears on this
10 map. (T. 23,703)
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1 This marking of the border line was not
2 altered later on. Subsequent to the establishment
3 of the Mongolian People's Republic the official
4 Chinese maps still showed her border line in the
5 Khalhin-Gol River area east of the river.

6 The Tribunal has admitted in evidence a
7 map published in Shanghai in 1930 which, as may be
8 seen from the inscription thereon "was drawn up on
9 the basis of recent and the most reliable land survey
10 conducted by the Far Eastern Geographic Department."
11 The marking of the location of the border line on
12 this map is in full conformity with the official
13 map published in Peking in 1919. What have the
14 Defense been able to offer to contradict these official
15 documents? Absolutely nothing. The Defense attempted
16 to contradict our official maps by two unofficial
17 anonymous maps not admitted in evidence by the Court.
18 (T. 23,680-721; 23,829-848).

19 We request that the Tribunal completely
20 disregard these maps never admitted in evidence by
21 the Court and given Exhibit numbers "for identification
22 only" (Exhibit for identification only 2651, T. 22,999,
23 a similar exhibit 2652, T. 23,000)

24 However, since this "evidence" is mentioned,
25 (we do not know on what procedural grounds in the

Defense Summation,) we may as well touch upon their
1 description merely to show to what inconvincible,
2 incredible, unreliable, and even from a purely formal
3 standpoint, valueless sources the Defense resorted to
4 in an effort to find at least a semblance of evidence
5 in rebuttal. One of the maps was published in the
6 book Holombair written by an anonymous author and it
7 is unknown when and where it was published. This
8 book carries no weight whatever and it is unknown
9 why the defense hold it to be "Chinese," for the place
10 of its publication has never been established. For
11 these reasons, the map from the said book cannot serve
12 as evidence being devoid of any credibility. Another
13 book allegedly written by a Chinese named Chang Mu
14 either in 1805 or in 1849 is a translation from Chinese
15 into Japanese and, in addition, as may be seen from
16 the inscription on the sketch map attached to the
17 book, the map was drawn up by a Japanese translator.
18 The inscription on the maps says "Though the map is
19 not attached to the original, but for the reference
20 of the readers I have compiled one outline map." This
21 map is characterized by the fact that the scene of
22 fighting in the Kholhin-Gol River area is hidden by
23 an inscription and for this reason it is quite impossible
24 to understand where in the opinion of the Japanese
25

1 translator the border runs, and generally speaking,
2 of what value to the Tribunal can be the opinion of
3 a translator.

4 In the light of the foregoing observations
5 concerning these maps the following assertion of the
6 defense in its summation does not appear serious:

7 "From the side of China, the suzerain of the entire
8 area...we have on the prosecution side the 1919 map
9 of the Inspector-General of Posts in Peking, which
10 shows a boundary substantially that contended for
11 by the Soviet and Mongolian side; whereas the books
12 History of Nomadic Life in Mongolia ...and the anonymous
13 Holombair ...contain, both in their text and in the
14 maps attached to them, the evidence that the Halha
15 River was the boundary." (T. 42,764)

16 A comparison of these anonymous maps which
17 have not even been admitted in evidence by the Tribunal
18 to the official Chinese maps presented by the prosecution
19 can only prove that the efforts of the defense to
20 find from Chinese sources something in support of
21 their standpoint have suffered a complete fiasco.

22 Once the defense themselves contended that
23 the border in the Khalha River area "is evidenced rather
24 by tradition and description by metes and bounds in
25 ancient writings..." (T. 22,419)

1 It would seem that after that it should be
2 expected that the defense would introduce those
3 "ancient writings." But, as a matter of fact, the
4 defense not only did not introduce a single "ancient"
5 writing or a map, but, on the contrary, furiously
6 objected to the prosecution's offer to introduce
7 in evidence the official Chinese historic materials
8 and maps relating to the beginning and middle of the
9 last century and showing the border line in full
10 conformity with the contentions of the Soviet-Mongolian
11 side. (T. 38,353, 38,359)

12 The President of the Tribunal came to the
13 conclusion that this question "May call for a major
14 investigation, which we may not be able to undertake
15 at this stage," (T. 38,358) and therefore the documents
16 were not admitted. To this remark made by Mr. President
17 the defense refer repeatedly in their summation and
18 try to interpret it as the Tribunal's refusal to
19 establish how the border line had run prior to the
20 commencement of the hostilities in the Nomonhan area.
21

22 We believe, judging by the general course
23 of the discussion of this matter, that Mr. President's
24 remark should be understood only as an indication of
25 the absence of the necessity to resort to historic
studies and documents during the discussion of matters

1 which are elucidated by more recent official data.

2 Thus, it must be considered established
3 beyond any reasonable doubt that the official Chinese
4 maps show the border in the Nomonhan area as passing
5 in full conformity with the contentions of the
6 Mongolian People's Republic and the Soviet Union, i.e.,
7 to the east of the river.

8 What do other maps show which the defense
9 tried to contemptuously brush aside? They show, first
10 of all that the marking of the border in the Nomonhan
11 area as passing east of the river was accepted in the
12 most authoritative cartographic publications of the
13 world. The defense themselves stated in their
14 summation, that "the cartographers of the world" marked
15 the boundary in that area "wherever any evidence
16 available to them suggested that it might possibly be."
17 (T. 42,763) We introduced a number of maps taken from
18 the most authoritative atlases of the world, first
19 of all in order to show that data which had been at
20 the disposal of the best authorities on the subject
21 long before the commencement of the fighting in the
22 Khalha River area showed that the boundary passed
23 not on the river, but to the east of it. It is also
24 evident that the authors of those atlases should have
25 based their work on the entirety of the official data

from Chinese sources which were at their disposal.

(Appendices to Ex. 3855)

Secondly, the maps tendered to the Tribunal show that even the Japanese official organs specially engaged in the matters of the organization of the administration on the occupied Manchurian territory, i.e., the organs which could be best informed as to the question of the passing of the border between Manchuria and the Mongolian People's Republic, showed that border to the east of the Khalha River, and not on the river. It was for that purpose that we introduced the maps of Manchuria published by the Kwantung Territory Bureau and the Kwantung Army in 1911 (Ex. 2710), 1926 (Ex. 2709), and in 1934 (Ex. 764-A).

The defense attempt to contend that these maps "have the value of tourists' guides" (T. 42,766) is more than peculiar. Planning aggression, the Japanese imperialists arbitrarily transferred the border from the territory east of the Khalha River on the river itself thus contradicting their own maps published prior to that time (Ex. 764-B).

Thirdly, it should be considered established that the Japanese research societies, which were engaged in the study of "Asiatic Culture" did not have any doubts as to where the boundary in the Nomonhan area

passed and showed it to the east of the river, i.e.,
1 in conformity with our contentions. We remind the
2 Tribunal that we introduced the "Large Map of the
3 Republic of China and map of Manchukuo" edited by the
4 Investigation and Compilation Department of Toadobunkai
5 (East Asia Culture Society) and published in November
6 1932 (Ex. 2711, T. 23,702) on which the border is
7 shown to the east of the river.

8 Fourthly, it is clear from those maps that
9 the Kwantung Army Headquarters, even after the border
10 on the maps for common use had been transferred from
11 the east of the Khalha River on the river itself,
12 continued to publish secret maps showing the border
13 correctly, i.e., to the east of the Khalhin-Gol River.
14 One of such maps published in December 1937 was formally
15 sent by Chief of the Kwantung Army Staff TOJO to Vice-
16 War Minister UMEZU; Yoshijiro (Ex. 719-B, 719-D).

18 Fifthly, it should be considered proved that
19 even the Japanese forces who were the first to start
20 the offensive in the Nomonhan area had a map which
21 showed the border line correctly, i.e., to the east
22 of the river. As the testimony of the prosecution
23 witness Major Bykov shows, this map was captured
24 in the car of Colonel AZUMA, Commander of the
25 intelligence detachment of the 23rd Japanese Division,

1 which had been put out of action by the Soviet
2 artillery (T. 28,371). In their summation the defense
3 tried to contend that this Japanese secret military
4 sketch-map had been made on the basis of a Soviet
5 map allegedly captured by the Japanese and "by them
6 in their turn reproduced for distribution to the
7 troops." (T. 42,771)

8 The absurdity of this contention of the
9 defense is apparent. The defense devoted their main
10 attention to references to a map of Soviet origin on
11 which the boundary of Mongolia was erroneously shown
12 on the Khalha River and not to the east of it. (Ex. 2713)

13 Hardly anybody would consider convincing
14 the long dissertation of the defense about this map
15 as it is clear to everybody that the map in question
16 is not a special map of Mongolia, but a very small-scale
17 map of the Eastern part of the Soviet Union containing a
18 note to the effect that the boundary of the adjoining
19 countries is shown on the basis of Japanese sources.
20 On all other official Soviet maps published prior
21 and after this time by the Soviet Army General Staff
22 the boundary was invariably shown to the east of the
23 river. (Ex. 3855, 2714, 3652). The causes of the
24 error in the map published in 1933 are sufficiently
25 explained in the Certificate of the Military Topographic

Department of the USSR Armed Forces General Staff,
1 and we shall not repeat them here.

2 What is left in the defense's favor after
3 this brief analysis of "the dozens of maps"? The
4 falsified maps of the Japanese General Staff or maps
5 taken from the anonymous books by unknown "Chinese",
6 who wrote in the Japanese language and published
7 their books no one knows where. The evidence tendered
8 by the prosecution in relation to the Nomonhan events
9 indisputably establishes that in all official sources,
10 and in particular on all official maps of Chinese
11 origin to which the defense themselves agree, as a
12 matter of principle, to attach greater importance
13 in comparison with other maps, the border was shown
14 passing not on the Khalha River, but to the east of
15 it, i.e., in conformity with the contentions of the
16 Mongolian People's Republic and the Soviet Union.

18 The documents show that actually the border
19 line, passing in the area mentioned above, was guarded
20 in the Lake Khassan area by the Soviet border guards
21 and in the Nomonhan area by the Mongolian border guards.

22 On this matter with regard to the Lake Khassan
23 area the Tribunal has at its disposal the testimony
24 of Major-General Grebennik, commanding officer of a
25 border guard detachment, and also the testimony of

Lieutenant Colonel Tereshkin, former commanding officer of a border guard outpost, and of Majors Chernopyatko and Batarshin, former members of a border guard garrison, who themselves, guarded the sector of the border in the vicinity of Lake Khassan. With regard to the guarding of the border line in the Nomonhan area, the Tribunal heard the testimony of Major Pantsungin Chogdon, commanding officer of the border guard outpost of this sector, and also the testimony of Major Bykov, commanding officer of a detachment of Soviet troops, which was the first to participate in the clash with the Japanese troops. The defense made every attempt to confuse these witnesses and make them admit that the sectors of the USSR territory (in the vicinity of Lake Khassan) and of the Mongolian People's Republic (in the Nomonhan area) prior to the commencement of the events were not guarded by border guards. All these attempts of the defense ended in failure. We shall remind the Tribunal only of some of the statements made by the prosecution witnesses. General Grebennik in reply to the question concerning the time when the post of Soviet border guards was established on the Zaozernaya Hill stated as follows:

"The post of the Soviet border guards was

1 established on the Zaozernaya Hill from the time
2 when the Soviet border Guard Corps was established...
3 In 1937, when I took over the sector of the border-
4 line which was guarded by the 59th Border Guard
5 Detachment I was on the Zaozernaya Hill, and I
6 personally saw there border guard posts, and I
7 inspected how well they knew their task." (T. 38,305)

8 The witness Batarshin in reply to the same
9 question testified:

10 "A I know that these outposts were guarded
11 prior to my arrival in the Posiet Detachment...border
12 detachment; and, therefore, during my tenure with the
13 Posiet Detachment, I was at these outposts several
14 times and guarded the state border in that area.

15 "RUSSIAN MONITOR: I was for several times
16 on that hill and guarded the state border in that
17 area.

18 "Q And when did you arrive in the Posiet
19 Detachment?
20

21 "A Since 1936.

22 "Q Consequently, the outposts were established
23 on the Bezjinyannaya and Zaozernaya Hills, prior to
24 1936.

25 "A So far as I know, the border guards
~~guarded the border in...the state border in that~~

1 area prior to my arrival. And, as I have stated
2 before, I was guarding the border in that area myself
3 as a soldier." (T. 32,136)

4 Identical testimony was given by the
5 witnesses Chernopyatko and Tereshkin.

6 The same situation had existed prior to
7 the commencement of the Japanese aggression against
8 the Mongolian People's Republic in the Nononhan area.
9 Major Pantsungin Chogdon, former commanding officer
10 of the 7th Mongolian border guard outpost, testified
11 that not less than 10 border guard patrols were
12 sent daily to the eastern bank of the river to guard
13 the border. (T. 38,544)

14 Identical testimony was given by Major
15 Bykov, a Soviet officer, who personally, together
16 with Chogdon, in March 1939, made a trip to the
17 border line to study the system of guarding, adopted
18 by the Mongolian border guards.

19 Major Bykov testified as follows:

20 "...the territory guarded by the outpost was
21 on the eastern bank of the Khalhin-Gol River, 20-22
22 kilometres in depth in the direction of Nononhan-
23 Burd-Obo east of the river...The bulk of the outpost
24 was on the western bank of the river in the Sunburin-
25 Tsegan-Nur lake area." The outpost daily sent patrols

1 to and set posts on the eastern bank of the river.

2 "The eastern bank of the river was very
3 carefully guarded by Mongolian border guards
4 especially in connection with systematic violations
5 of the state border in that area perpetrated by the
6 Japanese-Manchurian troops beginning from January
7 1939." (T. 38,363)

8 THE PRESIDENT: We will stop there tonight.
9 We will adjourn until half-past nine tomorrow morning.

10 (Whereupon, at 1600, an adjournment
11 was taken until Friday, 16 April 1948, at 0930)

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